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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550, 595, and 610

RIN 3206–AI61

Pay Administration; Back Pay; Holidays; and Physicians' Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to reflect changes in law which clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies, change the designation of holidays for certain Federal employees working overseas, and increase the maximum physicians' comparability allowance from $20,000 to $30,000 per year for employees who have served as a Government physician for more than 24 months. The changes in law are already effective.

DATES: *Effective Date:* The regulations are effective on December 28, 1999.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after December 28, 1999.

Comments Date: Comments must be received on or before February 28, 2000.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: These interim regulations reflect changes in law clarifying the statute of limitations for back pay, raising the maximum physicians' comparability allowance for employees with more than 24 months of service as Government physicians, and designating holidays for certain employees at duty posts outside the United States.

Statute of Limitations for Back Pay

Section 1104 of Public Law 105–261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), amended the back pay law (5 U.S.C. 5596(b)). Section 1104 added a new provision to clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies. This amendment clarifies that the 6-year limitation period in the Tucker Act (28 U.S.C. 2402 *et seq.*) and the Barring Act (31 U.S.C. 3702) applies to cases under the back pay law. Section 1104 also adds a new provision to 5 U.S.C. 7121 to clarify that settlements of grievances and arbitration awards under 5 U.S.C. 7121 are subject to the same 6-year statute of limitations. Note that this amendment does not modify the current 2-year statute of limitations (3 years for willful violations) provided by the Portal-to-Portal Act of 1947 for claims under the Fair Labor Standards Act of 1938, as amended, that are filed on or after June 30, 1994. These changes became effective on October 17, 1998, and are reflected in a new paragraph (e) in 5 CFR 550.804.

Maximum Physicians' Comparability Allowance

Section 7 of Public Law 105–266, the Federal Employees Health Care Protection Act of 1998 (October 19, 1998), amended 5 U.S.C. 5948(a) to increase the maximum physicians' comparability allowance (PCA) from $20,000 to $30,000 per year for an employee who has served as a Government physician for more than 24 months. We are revising 5 CFR 595.105(b) to reflect the higher maximum allowance rate. We are also correcting references to title 38, United States Code, in § 595.105(c). In addition, we are making other changes to clarify the language in § 595.105 generally. As part of these clarifying changes, the last sentence in § 595.105(c) has been edited and moved to § 595.102.

Section 7 also provides that agencies may modify any PCA service agreement in effect on the effective date of the Act to increase the PCA for a physician up to the new maximum amount during the time remaining under the service agreement. However, section 7 provides that any modification of an existing service agreement to increase a PCA cannot cause the total PCA paid to the employee during the calendar year to exceed the new $30,000 maximum or any other applicable limitation (e.g., the aggregate limitation on pay under 5 U.S.C. 5307).

These changes became effective on October 19, 1998. However, the Office of Management and Budget advises that before agencies may authorize a PCA in excess of $20,000, they must submit new or updated PCA plans and obtain OMB approval of the changes. See 5 CFR 595.107(a) and the criteria for revised Physicians' Comparability Allowance plans in OMB's Memorandum for the Heads of Departments and Agencies (M–99–04, December 11, 1998).

Holidays at Duty Posts Outside the United States

Section 1107 of Public Law 105–261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), adds a new provision to 5 U.S.C. 6103 which changes the designation of holidays for certain Federal employees who work at duty posts outside the United States. For this purpose, the Office of Personnel Management has determined that ''outside the United States'' refers to an employee's official duty station (or temporary duty station while traveling) that is not in (1) a State of the United States; (2) the District of Columbia; (3) Puerto Rico; (4) the U.S. Virgin Islands; (5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462); (6) American Samoa; (7) Guam; (8) Midway Atoll; (9) Wake Island; (10) Johnston Island; or (11) Palmyra. This is parallel to the definition of exempt area in 5 CFR 551.104 for the purpose of administering the foreign exemption from the minimum wage, overtime pay, and child labor provisions of the Fair Labor Standards Act of 1938, as amended.

Section 1107 provides that whenever Monday is designated as a holiday

under 5 U.S.C. 6103(a), the first regularly scheduled workday in the week is the holiday for a Federal employee at a duty post outside the United States whose basic workweek includes Monday, but is not the typical Monday through Friday work schedule found in the United States. The intent of this new provision of law is to create a 3-day weekend with a holiday on Sunday for Federal employees who work Sunday through Thursday with nonworkdays on Friday and Saturday. Thus, if the regularly scheduled administrative workweek designated by an agency for an employee is Sunday through Saturday midnight, and the employee's basic workweek is Sunday through Thursday, this provision will have the effect of moving the employee's holiday from Monday to Sunday (the day before) and providing a 3-day weekend (Friday, Saturday, and Sunday) to the employee. However, when employees working overseas do not have Sunday through Thursday work schedules, the new law will usually not have the desired effect unless the agency makes an adjustment in the administrative workweek.

This change in law became effective on October 17, 1998. See the conforming revisions in 5 CFR 610.201 and 610.202. Section 610.202 has also been revised to reflect the fact that employees on alternative work schedules may have a basic work requirement, as defined in 5 U.S.C. 6121(3).

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**. This waiver is appropriate because the attached changes in regulations update Office of Personnel Management regulations to make them consistent with changes in law that are already effective.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 550, 595, and 610

Administrative practice and procedure, Claims, Government employees, Health professions, Holidays, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 550, 595, and 610 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart H—Back Pay

3. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

4. In § 550.804, paragraph (e) is added to read as follows:

§ 550.804 Determining entitlement to back pay.

* * * * *

(e)(1) The pay, allowances, and differentials paid as back pay under this subpart (including payments made under any grievance or arbitration decision or any settlement agreement) may not exceed that authorized by any applicable law, rule, regulation, or collective bargaining agreement, including any applicable statute of limitations.

(2) An agency may not authorize pay, allowances, and differentials under this subpart in any case for a period beginning more than 6 years before the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay, consistent with 31 U.S.C. 3702(b). (See also § 178.104 of this chapter.)

(3) For back pay claims dealing with payments under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207, *et seq.*), an agency must apply the 2-year statute of limitations (3 years for willful violations) in 29 U.S.C. 255a. (See also § 551.702 of this chapter.)

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

7. The authority citation for part 595 continues to read as follows:

Authority: 5 U.S.C. 5948; E.O. 12109, 44 FR 1067, Jan. 3, 1979.

8. In § 595.102, paragraph (c) is added to read as follows:

§ 595.102 Coverage and exclusions.

* * * * *

(c) Physicians employed and paid under title 38, United States Code, and Commissioned Corps officers of the Public Health Service under title 42, United States Code, are not eligible for physicians' comparability allowances.

9. In § 595.105, paragraphs (b) and (c) are revised to read as follows:

§ 595.105 Determination of amount of comparability allowance.

* * * * *

(b) A physician with 24 months or less of service as a Government physician may not be paid a physicians' comparability allowance in excess of $14,000 per annum. A physician with more than 24 months of service as a Government physician may not be paid a physicians' comparability allowance in excess of $30,000 per annum.

(c) In determining length of service as a Government physician, agencies must exclude periods of leave without pay. However, agencies may credit any prior service as a Government physician, including—

(1) Prior service as a physician under sections 7401 and 7405 of title 38, United States Code; and

(2) Prior active service as a medical officer in the Commissioned Corps of the Public Health Service under title II of the Public Health Service Act (42 U.S.C. chapter 6A).

* * * * *

PART 610—HOURS OF DUTY

Subpart B—Holidays

10. The authority citation for part 610, subpart B, continues to read as follows:

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

11. Section 610.201 is revised to read as follows:

§ 610.201 Identification of holidays.

Holidays are determined under section 6103 of title 5, United States Code, and Executive Order 11582 of February 11, 1971.

12. In § 610.202, paragraph (a) is revised, and paragraph (d) is added to read as follows:

§ 610.202 Determining the holiday.

* * * * *

(a) Except when a different holiday is designated by section 6103(b)(3) of title 5, United States Code, when a holiday falls on a day during which part of the employee's basic workweek (as defined in § 610.102) or basic work requirement (as defined in 5 U.S.C. 6121(3)) is scheduled to be completed, that workday is the employee's holiday.

* * * * *

(d) The provisions of section 6103(b)(3) of title 5, United States Code, on determining holidays for certain

employees at duty posts outside the United States apply to covered employees who are working outside the United States at a permanent or temporary station or under travel orders. For the purpose of section 6103(b)(3), *United States* includes—

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The U.S. Virgin Islands;
(5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Midway Atoll;
(9) Wake Island;
(10) Johnston Island; and
(11) Palmyra.

[FR Doc. 99–33587 Filed 12–27–99; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN: 3206–AI64

Federal Employees' Group Life Insurance Program: Life Insurance Improvements

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Life Insurance Improvement Act, which was enacted October 30, 1998. This law made numerous changes to the Federal Employees' Group Life Insurance (FEGLI) Program. These changes include the elimination of maximums on Basic insurance and Option B, coverage of foster children under Option C, making the contractual incontestability provision statutory, providing for the direct payment of premiums for all employees and annuitants whose pay is too small for premium withholdings, allowing retiring employees to elect unreduced Option B and Option C coverage, establishing a three-year demonstration project for the portability of Option B, and increasing the coverage available under Option C.

DATES: Interim rules are effective January 27, 2000. Comments must be received on or before February 28, 2000.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3425, 1900 E Street, NW, Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On October 30, 1998, Public Law 105–311, 112 Stat. 2950, was signed into law. This law, the Federal Employees Life Insurance Improvement Act, changed many parts of the FEGLI Program. These regulations put the various new statutory provisions into place.

1. Elimination of Maximums

An employee's Basic Insurance Amount is his/her annual rate of basic pay, rounded to the next higher thousand, plus $2,000. Each multiple of Option B coverage is equal to an employee's annual pay, rounded to the next higher thousand.

Before the enactment of Public Law 105–311, the law limited both Basic insurance and the multiples of Option B insurance to the annual rate of pay for Level II Executive Schedule positions, rounded up (plus $2,000 for Basic). The maximum amount of Basic insurance was $139,000, and the maximum amount of an Option B multiple was $137,000.

The new law removed those maximums. These regulations also provide that Option A coverage, which increased for employees in this situation, will no longer exceed $10,000.

This provision of the law became effective the first pay period beginning on or after October 30, 1998.

2. Coverage of Foster Children

Before the enactment of Public Law 105–311, foster children were not eligible for coverage under Option C. They became eligible as covered family members effective October 30, 1998.

For ease of administration, we have made the requirements for coverage of foster children under Option C the same as the requirements for coverage of foster children under the Federal Employees Health Benefits Program. Those requirements are that the child be unmarried and under the age of 22 (or if over 22, incapable of self-support because of a disabling condition that started before the 22nd birthday), that the child be living with the employee or annuitant in a regular parent-child relationship, that the employee/annuitant be the principal source of support for the child, and that the employee/annuitant expect to raise the child to adulthood. The employee/annuitant must certify in writing that the child meets these requirements. Grandchildren can qualify as foster children only if they meet all the requirements.

3. Incontestability

This provision allows an erroneous enrollment to stand if it has been in effect for at least 2 years. There was already such a provision in the FEGLI contract, but it did not apply if the employee or annuitant was excluded from coverage by law or if the employee's position was excluded by regulation. The contractual provision also did not require that the individual have paid premiums for the erroneous coverage before incontestability could apply. The new statutory provision applies to all situations in which an administrative error allows an employee or annuitant to be insured when the law or regulations would otherwise prohibit the election. If the erroneous coverage and applicable premium withholdings have been in place for at least 2 years before the error is discovered, the coverage is allowed to stand.

This provision was effective for any findings of erroneous coverage made on or after October 30, 1998.

4. Direct Payment of Premiums

Before the enactment of Public Law 105–311, all employees and compensationers and most annuitants whose pay/compensation/annuity was too small for premium withholdings had to terminate their FEGLI coverage. The only exception to this was FERS (Federal Employees' Retirement System) annuitants; these annuitants were allowed to make direct premium payments.

Public Law 105–311 extends the right to make direct payment of FEGLI premiums to anyone with insufficient pay, compensation, or annuity. These regulations provide that this applies when the ''pay,'' after all other deductions, is insufficient on an ongoing basis, *i.e.*, when the situation is expected to continue for at least 6 months.

Insured individuals in this situation can choose either to terminate their FEGLI coverage or to make direct payments. Employees who choose to make direct payments must pay on a current basis; if they do not make the payments, the coverage cancels. Employees who choose to terminate are entitled to the 31-day extension of coverage and the right to convert. When the employee's pay again becomes sufficient for the premium withholdings, premiums will again be withheld from the employee's pay. Any

coverage that was terminated is automatically restored; coverage that was cancelled for nonpayment, however, will remain cancelled.

Annuitants and compensationers who elect to make direct premium payments will remain on direct pay, even if their ''pay'' increases enough to allow withholdings.

This provision became effective the first pay period beginning on or after October 30, 1998.

5. Election of Unreduced Options B and C at Retirement

Before the enactment of Public Law 105–311, Option B and C coverage began to reduce for annuitants when they reached age 65. Both coverages reduced by 2% per month until there was no coverage left. This reduction was automatic, and annuitants had no choice about it. Because their coverage was reducing, annuitants paid no premiums after age 65.

Public Law 105–311 allows annuitants to make an election at retirement as to whether they want their Option B and Option C coverage to reduce. (This also applies to persons becoming insured as compensationers.) If they choose No Reduction, they will continue to pay premiums appropriate to their age beyond age 65. OPM has set April 24, 1999, as the effective date for this provision. This applies to persons separating for retirement or becoming insured as compensationers on or after that date.

Under these regulations, retiring employees (and persons becoming insured as compensationers) will choose how many of the Option B multiples for which they are eligible and how many of the Option C multiples for which they are eligible they actually want to continue. They will also elect either Full Reduction or No Reduction for all of their multiples of each type of Optional coverage. Shortly before an individual's 65th birthday, he/she will receive a reminder notice, showing what coverage the annuitant/compensationer elected and what the premiums will be for coverage beyond age 65. The individual will then have an opportunity to change his/her election, including choosing to have some multiples reduce and others not reduce. For persons who are already over age 65 at the time of retirement or becoming insured as a compensationer, the reminder notice will be sent as soon as the retirement processing is complete.

Public Law 105–311 also allows for an election opportunity for those who are already retired or insured as compensationers and who still have Option B coverage on the effective date (April 24, 1999). Those who are over age 65 and whose Option B coverage has already started reducing will elect whether to freeze their remaining Option B at the amount in force on the effective date. These annuitants/compensationers will not have an election opportunity for Option C.

6. Portability

Public Law 105–311 set up a 3-year demonstration project for the portability of Option B coverage which would otherwise terminate. This provision allows certain individuals to continue their group coverage at the group rate plus an administrative surcharge. Those eligible for portability of their Option B are separating employees and employees exceeding 12 months in nonpay status, who meet the same 5-year/1st opportunity requirement as employees who are retiring. Ported coverage reduces by 50% when the insured individual reaches age 70 and terminates when the individual reaches age 80.

These regulations put in place the requirements and procedures for portability. OPM has set April 24, 1999, as the effective date for this provision.

7. Increased Option C Coverage

Before the enactment of Public Law 105–311, Option C coverage was $5,000 for a spouse and $2,500 for each eligible child.

Public Law 105–311 increased the coverage available under Option C to up to 5 multiples of the previous amounts. OPM has set April 24, 1999, as the effective date for this provision.

New employees and employees newly eligible on or after the effective date can elect the higher amounts within 31 days of becoming eligible. Employees who have a life event on or after April 24, 1999, can elect the higher amounts within 60 days after the life event. Employees who had a life event between October 30, 1998, and April 23, 1999, were allowed to elect the increased coverage within 60 days of April 24, 1999; their increased coverage was effective April 24, 1999.

8. Open Season

Public Law 105–311 required OPM to conduct an open season no later than 180 days after the date of enactment, with coverage elected during the open season effective 365 days after the start of the open season.

OPM held an open enrollment period from April 24, 1999, through June 30, 1999. All eligible employees were able to elect or increase coverage. The effective date of open enrollment elections is the first pay period beginning on or after April 23, 2000, which follows a pay period in which the employee was in pay and duty status for the required amount of time.

9. Study and Report

Public Law 105–311 also required OPM to conduct a study and submit a report to Congress on Federal employees' interest in other types of life insurance, specifically group universal life insurance, group variable universal life insurance, and additional voluntary accidental death and dismemberment insurance. OPM completed the study, which showed that there is some interest in these other life insurance products. OPM submitted its report to Congress May 4, 1999.

Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. This notice is being waived in order to implement legislation which has become effective.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect life insurance benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 870 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. Revise the authority citation for part 870 to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under section 599C of Public Law 101–513, 104 Stat. 2064, as amended; § 870.302(a)(3)(ii) also issued under sec. 153 of Public Law 104–134, 110 Stat. 1321; § 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Public Law 105–33, 111 Stat. 251 and section 7(e) of Public Law 105–274, 112 Stat. 2419.

2. In § 870.101, revise the definition of the first appearance of *Child* and add the definitions *Portability Office, Ported coverage,* and *Regular parent-child relationship* in alphabetical order to read as follows:

§ 870.101 Definitions.

* * * * *

Child, as used in the definition of *Family member* for Option C coverage, means a legitimate child, an adopted child, a stepchild or foster child who lives with the employee or former employee in a regular parent-child relationship, or a recognized natural child. It does not include a stillborn child or a grandchild (unless the grandchild meets all the requirements of a foster child). The child must be under age 22 or, if age 22 or over, must be incapable of self-support because of a mental or physical disability which existed before the child reached age 22.

* * * * *

Portability Office means the office OPM designates to manage ported coverage and to collect premiums for ported coverage.

Ported coverage means continued coverage that would otherwise have terminated.

* * * * *

Regular parent-child relationship means that the employee or former employee is exercising parental authority, responsibility, and control over the child by caring for, supporting, disciplining, and guiding the child, including making decisions about the child's education and medical care.

* * * * *

§ 870.104 [Redesignated as § 870.105]

3. Redesignate § 870.104 as § 870.105 and amend it by revising paragraph (a), and add a new § 870.104 to read as follows:

§ 870.104 Incontestability.

(a) If an individual erroneously becomes insured, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the individual has paid applicable premiums during that time. This applies to errors discovered on or after October 30, 1998.

(b) If an employee is erroneously allowed to continue insurance into retirement or compensation, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the annuitant or compensationer has paid applicable premiums during that time. This applies to such errors discovered on or after October 30, 1998.

(c) If an individual who is allowed to continue erroneous coverage because of incontestability does not want the coverage, he/she may cancel the coverage on a prospective basis. There is no refund of premiums.

§ 870.105 Initial decision and reconsideration.

(a) An individual may ask his/her agency or retirement system to reconsider its initial decision denying life insurance coverage, the opportunity to change coverage, the opportunity to assign insurance, or the opportunity to elect portability for Option B coverage.

* * * * *

4. Revise § 870.202(a)(1)(ii) to read as follows:

§ 870.202 Basic insurance amount (BIA).

(a)(1) * * *

(ii) $10,000; whichever is higher, unless an employee has elected a Living Benefit under subpart K of this part. Effective for pay periods beginning on or after October 30, 1998, there is no maximum BIA.

* * * * *

5. Revise § 870.205(a), (b)(1), and (c) to read as follows:

§ 870.205 Amount of Optional insurance.

(a) Option A coverage is $10,000. Effective for pay periods beginning on or after October 30, 1998, Option A cannot exceed this amount. Exception: This does not apply to annuitants who retired with a higher amount of Option A before the removal of the maximum on Basic insurance (the first pay period beginning on or after October 30, 1998).

(b)(1) Option B coverage comes in 1, 2, 3, 4, or 5 multiples of an employee's annual pay (after the pay has been rounded to the next higher thousand, if not already an even thousand). Effective for pay periods beginning on or after October 30, 1998, there is no maximum amount for each multiple.

* * * * *

(c) Effective April 24, 1999, Option C coverage comes in 1, 2, 3, 4, or 5 multiples of the following amounts: $5,000 on the death of a spouse and $2,500 on the death of an eligible child. Payments are made to the insured individual.

6. Revise § 870.301(b) and add a new § 870.303 to subpart C to read as follows:

Subpart C—Eligibility

§ 870.301 Eligibility for life insurance.

* * * * *

(b)(1) Optional insurance must be specifically elected; it is not automatic.

(2) An employee may elect one or more types of Optional insurance if:

(i) He/she has Basic insurance; and

(ii) He/she does not have a waiver of that type (or types) or Optional insurance still in effect.

* * * * *

§ 870.303 Eligibility of foster children under Option C.

(a) Effective October 30, 1998, foster children are eligible for coverage as family members under Option C.

(b) To qualify for coverage as a foster child, the child must meet the following requirements:

(1) The child must live with the insured employee, annuitant, or compensationer;

(2) The parent-child relationship (as defined in § 870.101) must be with the insured employee, annuitant, or compensationer, not the biological parent;

(3) The employee, annuitant, or compensationer must be the primary source of financial support for the child; and

(4) The employee, annuitant, or compensationer must expect to raise the child to adulthood.

(c) A child placed in an insured individual's home by a welfare or social service agency under an agreement by which the agency retains control of the child or pays for maintenance does not qualify as a foster child.

(d)(1) An insured individual wishing to cover a foster child must sign a certification stating that the child meets all the requirements and that he/she will notify the employing office or retirement system if the child marries, moves out of the home, or stops being financially dependent on the employee, annuitant, or compensationer.

(2) The employing office or retirement system must keep the signed certification in the insured individual's file, along with other life insurance forms.

(e) A foster child who moves out of the insured individual's home to live with a biological parent loses eligibility and cannot again be covered as a foster child unless:

(1) The biological parent dies;

(2) The biological parent is imprisoned;

(3) The biological parent becomes unable to care for the child due to a disability; or

(4) The employee, annuitant, or compensationer obtains a court order taking parental responsibility away from the biological parent.

7. Revise § 870.402(c) to read as follows:

§ 870.402 Withholdings for Optional insurance.

* * * * *

(c)(1) Subject to the provisions for reemployed annuitants in § 870.707, the full cost of Optional insurance must be withheld from the annuity of an annuitant and from the compensation of a compensationer.

(2) The withholdings for Option A stop the month after the month in which an annuitant or compensationer reaches age 65.

(3) For an annuitant or compensationer who elects Full Reduction for any Option B or Option C multiples, the withholdings for those multiples stop the month after the month in which he/she reaches age 65.

(4) For an annuitant or compensationer who elects No Reduction for any Option B or Option C multiples, the withholdings for those multiples continue, as long as he/she remains insured.

* * * * *

8. Revise § 870.405 to read as follows:

§ 870.405 Direct premium payments.

(a) Since January 1, 1988, annuitants who retired under 5 U.S.C. chapter 84 (Federal Employees' Retirement System) have been able to make direct premium payments if their annuity became too small to cover the premiums. Effective the first pay period beginning on or after October 30, 1998, all employees, annuitants, and compensationers whose pay, annuity, or compensation is insufficient to cover the withholdings can make direct premium payments.

(b)(1) For an individual to be eligible to make direct premium payments, the employing office or retirement system must determine that the pay, annuity, or compensation, after all other deductions, is expected to be insufficient on an ongoing basis, *i.e.,* for the next 6 months or more.

(2) This section does not apply to employees in nonpay status. Employees in nonpay status are governed by § 870.404(c).

(c)(1) When the employing office or retirement system determines that the pay, annuity, or compensation is insufficient, and will be insufficient on an ongoing basis, it must notify the insured individual (or the assignee, if the individual has assigned his/her insurance under subpart I of this part) in writing and inform him/her of the available choices.

(2) Within 31 days of receiving the notice (45 days for individuals living overseas), the insured individual (or assignee) must return the notice to the employing office or retirement system, choosing either to terminate some or all of the insurance or to make direct premium payments. An employee, annuitant, or compensationer is considered to receive a mailed notice 5 days after the date of the notice.

(3) If an individual does not return the notice within the required time frames, the employing office or retirement system will terminate the insurance.

(d)(1) Terminated coverage stops at the end of the last pay period for which premiums were withheld.

(2) An individual whose insurance terminates, either by choice or by failure to return the notice, gets the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(3)(i) When an employee's pay again becomes sufficient to allow premium withholdings, the employing office will automatically reinstate the terminated coverage.

(ii) An annuitant or compensationer whose coverage terminates cannot have the coverage reinstated when the annuity or compensation becomes sufficient to cover withholdings.

(e)(1) Employing offices and retirement systems must establish a method for accepting premium payments for insured individuals who choose to pay directly.

(2) Individuals who are paying directly must send the required premium payment to the employing office or retirement system for every pay period during which coverage continues. The insured individual must make the payment after each pay period, according to the schedule established by the employing office or retirement system.

(3)(i) When an employee's pay again becomes sufficient to allow premium withholdings, he/she must stop making direct payments. The employing office will begin to withhold premiums automatically.

(ii) An annuitant or compensationer who is making direct premium payments must continue to pay directly, even if the annuity or compensation becomes sufficient to allow withholdings.

(f) The employing office or retirement system must submit all direct premium payments, along with its regular life insurance premiums, to OPM according to procedures set by OPM.

(g)(1) If an individual on direct pay fails to make the required premium payment on time, the employing office or retirement system must notify the individual. The individual must make the payment within 15 days after receiving the notice (45 days if living overseas). An individual is considered to receive a mailed notice 5 days after the date of the notice.

(2) If an insured individual fails to make the overdue payment, his/her insurance cancels. Cancellation is effective at the end of the last pay period for which payment was received.

(3) An individual whose insurance cancels for nonpayment does not get the 31-day extension of coverage or the right to convert provided in subpart F of this part.

(4) Coverage that cancels for nonpayment is not reinstated when the individual's pay, annuity, or compensation becomes sufficient to allow withholdings, except as provided by paragraph (g)(5) of this section.

(5) If, for reasons beyond his/her control, an insured individual is unable to pay within 15 days of receiving the past due notice (45 days if living overseas), he/she may request reinstatement of coverage by writing to the employing office or retirement system within 30 days from the date of cancellation. The individual must provide proof that he/she was prevented from paying within the time limit for reasons beyond his/her control. The employing office or retirement system will decide if the individual is eligible for reinstatement of coverage. If the employing office or retirement system approves the request, the coverage is reinstated back to the date of cancellation, and the individual must pay the back premiums.

9. Revise § 870.506(a) to read as follows:

§ 870.506 Optional insurance: cancelling a waiver.

(a) *When there is a change in family circumstances.* (1) An employee cannot cancel a waiver of Option A due to a change in family circumstances.

(2) An employee who has waived Option B coverage can elect it, and an employee who has fewer than 5 multiples of Option B can increase the number of multiples, upon his/her marriage or divorce, upon a spouse's death, or upon acquiring an eligible child. Exception: Acquiring a foster child does not qualify an employee to elect or increase Option B coverage.

(3) The number of multiples of Option B coverage that an employee can obtain or add (which cannot exceed a total of 5) is limited to the following:

(i) For marriage, the number of additional family members (spouse and eligible children) acquired with the marriage;

(ii) For acquisition of children, the number of eligible children acquired; and

(iii) For divorce or death of a spouse, the total number of eligible children of the employee.

(4)(i) An employee who has waived Option C coverage can elect it, and an

employee who has fewer than 5 multiples of Option C can increase the number of multiples, upon his/her marriage or upon acquiring an eligible child. An employee can also elect Option C coverage upon divorce or death of a spouse, if the employee has any eligible children.

(ii) An employee electing or increasing Option C coverage may elect any number of multiples, as long as the total number of multiples does not exceed 5.

(5)(i) Except as stated in paragraph (a)(5)(iii) of this section, the employee must file an election under paragraph (a)(2) or (a)(4) of this section with the employing office, in a manner designated by OPM, along with proof of the event, no later than 60 days following the date of the event that permits the election; the employee may instead file the election before the event and provide proof no later than 60 days following the event.

(ii) This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event or if the individual separates from covered service prior to the end of the 60-day time limit. This extension cannot exceed the 31-day time limit for electing insurance following employment in a covered position or, for an election under paragraph (a)(4) of this section, the 31-day period following the 1st day on which the individual becomes eligible to cancel a waiver of Basic insurance.

(iii) An employee making an election under paragraph (a)(4)(i) of this section because of acquiring an eligible foster child must file the election with the employing office no later than 60 days after completing the required certification.

(iv) Employees who had a change in family circumstances between October 30, 1998, and April 23, 1999, had until June 23, 1999, to make an election under this section.

(6)(i) The effective date of Option B insurance elected under paragraph (a)(1) of this section is the 1st day the employee actually enters on duty in pay status on or after the day the employing office receives the election.

(ii) The effective date of Option C coverage elected because of marriage, divorce, death of a spouse, or acquiring an eligible child other than a foster child is the day the employing office receives the election, or the date of the event, whichever is later. Exception: Coverage elected under paragraph (a)(5)(iv) of this section was effective April 24, 1999.

(iii) The effective date of Option C coverage elected because of acquiring a foster child is the date the employing office receives the election or the date the employee completes the certification, whichever is later.

10. Add new paragraph (e) to § 870.601 to read as follows:

§ 870.601 Termination of Basic insurance.

* * * * *

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405 of this part, Basic insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of Basic insurance.

11. In § 870.602 revise paragraphs (a), (c), and (e) to read as follows:

§ 870.602 Termination of Optional insurance.

(a)(1) The Optional insurance of an insured employee stops when his/her Basic insurance stops, subject to the same 31-day extension of coverage.

(2) An employee who meets the requirements for portability, as provided in subpart L of this part, may elect portability for his/her Option B coverage, instead of having it terminate.

* * * * *

(c)(1) If an insured employee is not eligible to continue Optional coverage as an annuitant or compensationer as provided by § 870.701, the Optional insurance stops on the date that his/her Basic insurance is continued or reinstated under the provisions of § 870.701, subject to a 31-day extension of coverage.

(2) A compensationer who meets the requirements for portability, as provided in subpart L of this part, may elect portability for his/her Option B coverage, instead of having it terminate.

* * * * *

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405 of this part, Optional insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of the Optional insurance. If an individual has more than one type of Optional insurance and his/her pay, annuity, or compensation is sufficient to cover some but not all of the insurance, the multiples of Option C terminate first, followed by Option A, and then the multiples of Option B.

§ 870.703 [Removed]

§ 870.702 [Redesignated as § 870.703]

12. Remove § 870.703, redesignate § 870.702 as § 870.703, and add a new § 870.702 to read as follows:

§ 870.702 Amount of Basic insurance.

(a) The amount of Basic insurance an annuitant or compensationer can continue is the BIA on the date insurance would otherwise have stopped because of the individual's separation from service or completion of 12 months in nonpay status. The amount of Basic insurance in force is the BIA minus any reductions applicable under § 870.703(a).

(b)(1) For the purpose of paying benefits upon the death of an insured individual under age 45 who is retired or receiving compensation, the BIA will be multiplied by the appropriate age factor shown in § 870.202(c) of this part. Exceptions:

(i) If the insured individual retired or became insured as a compensationer before October 10, 1980, or

(ii) If the insured individual elected a partial Living Benefit as an employee under subpart K of this part.

(2)(i) For an annuitant or compensationer who elected a partial Living Benefit as an employee, the amount of Basic insurance he/she can continue is the post-election BIA, as shown in § 870.203(a)(2) of this part.

(ii) For the purpose of paying benefits upon the death of an insured annuitant or compensationer under age 45 who elected a partial Living Benefit as an employee, the BIA will be multiplied by the age factor in effect on the date OFEGLI received the completed Living Benefit application.

13. Redesignate §§ 870.704, 870.705, and 870.706 as §§ 870.706, 870.707, and 870.708 respectively, and add new §§ 870.704 and 870.705 to read as follows:

§ 870.704 Amount of Option A.

(a) The amount of Option A coverage an annuitant or compensationer can continue is $10,000.

(b) An annuitant's or compensationer's Option A coverage reduces by 2 percent of the original amount each month up to a maximum reduction of 75 percent. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the date of the insured's 65th birthday, whichever is later.

§ 870.705 Amount and election of Option B and Option C.

(a) The number of multiples of Option B and Option C coverage an annuitant or compensationer can continue is the highest number of multiples in force during the applicable period of service required to continue Option B and Option C.

(b)(1)(i) At the time an employee retires or becomes insured as a compensationer, he/she must elect the number of allowable multiples he/she wishes to continue during retirement or while receiving compensation.

(ii) An employee who elects to continue fewer multiples than the number for which he/she is eligible is considered to have cancelled the multiples that are not continued.

(iii) Employees separating for retirement and employees becoming insured as compensationers on or after April 24, 1999, must also elect either Full Reduction or No Reduction for all of the multiples being continued.

(iv) An employee who does not make a reduction election is considered to have chosen Full Reduction.

(2)(i) Prior to reaching age 65, an annuitant or compensationer can change from No Reduction to Full Reduction at any time. Exception: If the individual has assigned his/her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage.

(ii) Prior to reaching age 65, an annuitant or compensationer can change from Full Reduction to No Reduction at any time.

(3)(i) After reaching age 65, an annuitant or compensationer can change from No Reduction to Full Reduction at any time. Exception: If the individual has assigned his/her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage. If an individual age 65 or over changes to Full Reduction, the amount of insurance in force is computed as if he/she had elected Full Reduction initially. There is no refund of premiums.

(ii) Except as provided in paragraph (b)(4) of this section, after reaching age 65, an annuitant or compensationer cannot change from Full Reduction to No Reduction.

(4)(i) Shortly before an annuitant or compensationer's 65 birthday, the retirement system will send a reminder about the election he/she made and will offer the individual a chance to change the election. At that time, the annuitant or compensationer can choose to have some multiples of Option B and Option C reduce and some not reduce.

(ii) If the individual is already 65 or older at the time of retirement or becoming insured as a compensationer, the retirement system will send the reminder and give the opportunity to change the election as soon as the retirement processing or compensation transfer is complete.

(iii) If the individual assigned his/her insurance as provided in subpart I of this part, and if the employee elected No Reduction for Option B coverage at the time of retirement or becoming insured as a compensationer, the retirement system will send the reminder notice for Option B coverage to the assignee.

(iv) An annuitant or compensationer who wishes to change his/her reduction election must return the notice by the end of the month following the month in which the individual turns 65, or if already over age 65, by the end of the 4th month after the date of the letter. An annuitant or compensationer who does not return the election notice will keep his/her initial election.

(c)(1) For each multiple of Option B and/or Option C for which an individual elects Full Reduction, the coverage reduces by 2 percent of the original amount each month. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the insured's 65th birthday, whichever is later. At 12:00 noon on the day before the 50th reduction, the insurance stops, with no extension of coverage or conversion right.

(2) For each multiple of Option B and/or Option C for which an individual elects No Reduction, the coverage in force does not reduce. After age 65 the annuitant or compensationer continues to pay premiums appropriate to his/her age.

(d)(1) Employees who were already retired or insured as compensationers on April 24, 1999, and who had Option B, were given an opportunity to make an election for Option B.

(i) Annuitants and compensationers who were under age 65 were notified of the option to elect No Reduction. The retirement system will send these individuals an actual election notice before their 65th birthday, as provided in paragraph (b)(4) of this section.

(ii) Annuitants and compensationers who were age 65 or older, and who still had some Option B coverage remaining, were given the opportunity to stop further reductions. These individuals had until October 24, 1999, to make the No Reduction election. The amount of Option B coverage retained was the amount in effect on April 24, 1999. Those annuitants and compensationers who elected No Reduction were required to pay premiums retroactive to April 24, 1999.

(2) Employees who were already retired or insured as compensationers on April 24, 1999, could not elect No Reduction for Option C.

14. Add § 870.801(d)(3)(v) to read as follows:

§ 870.801 Order of precedence and payment of benefits.

* * * * *

(d) * * *

(3) * * *

(v) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

* * * * *

15. Revise § 870.802(b) and (g)(1) to read as follows:

§ 870.802 Designation of beneficiary.

* * * * *

(b) A designation of beneficiary must be in writing, signed by the insured individual, and witnessed and signed by 2 people. The appropriate office must receive the designation before the death of the insured.

(1) For employees, the appropriate office is the employing office.

(2) For annuitants and compensationers, the appropriate office is OPM.

(3) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

* * * * *

(g)(1) A designation of beneficiary is automatically cancelled 31 days after the individual stops being insured. Exception: If the individual elects portability for Option B, a valid designation remains in effect.

* * * * *

16. Revise § 870.902 to read as follows:

§ 870.902 Making an assignment.

(a) To assign insurance, an insured individual must complete an approved assignment form. Only the insured individual can make an assignment; no one can assign on behalf of an insured individual.

(b) The individual must submit the completed and signed form to the appropriate office indicating the intent to irrevocably assign all ownership of the insurance. The form must also be witnessed and signed by 2 people.

(1) For employees, the appropriate office is the employing office.

(2) For annuitants and compensationers, the appropriate office is OPM.

(3) For employees and former employees who have ported Option B coverage, the appropriate office is the Portability Office.

17. Revise § 870.907(c) to read as follows:

§ 870.907 Termination and conversion.

* * * * *

(c) An assignment terminates 31 days after the insurance terminates, unless the insured individual is reemployed in or returns to a position in which he/she is entitled to coverage under this part within 31 days after the insurance terminates. Exception: If an employee elects portability for Option B coverage, an assignment remains in effect. If the individual returns to Federal service, Basic insurance and any Option A insurance acquired through returning to service is subject to the existing assignment.

18. A new subpart L is added to read as follows:

Subpart L—PORTABILITY

870.1201 Portability permitted.
870.1202 Eligibility.
870.1203 Amount of insurance.
870.1204 Cost of insurance.
870.1205 Electing portability for Option B.
870.1206 Termination and cancellation of ported coverage.
870.1207 Designations, assignments, and court orders.
870.1208 Return to active service.

Subpart L—Portability

§ 870.1201 Portability permitted.

(a) Effective April 24, 1999, until April 24, 2002, eligible employees may elect portability for Option B coverage that would otherwise terminate.

(b) An individual cannot elect portability for Basic insurance, Option A, or Option C.

§ 870.1202 Eligibility.

(a) An employee is eligible to elect portability for Option B if:

(1) His/her coverage is terminating due to separation or completion of 12 months in nonpay status; and

(2) He/she has had Option B for the 5 years of service immediately before the date the coverage would otherwise terminate, or for the full period(s) of service during which he/she was eligible to have Option B, if less than 5 years.

(b) If the employee has assigned his/her coverage as provided in subpart I of this part, it is the assignee who has the right to elect portability.

§ 870.1203 Amount of insurance.

(a) An employee can elect portability for up to the highest number of Option B multiples that meet the requirements of § 870.1202(a)(2).

(b)(1) An individual with ported coverage can reduce the number of multiples at any time. Exception: If the individual assigned his/her coverage as provided in subpart I of this part, only the assignee has the right to reduce the number of multiples.

(2) An individual with ported coverage cannot increase the number of multiples.

(c) Salary changes have no effect on the amount of Option B coverage in force for an individual with ported coverage.

(d) The amount of ported coverage in force reduces by 50 percent at the beginning of the 2nd calendar month after the individual reaches age 70 or, if the individual is 70 or older at the time he/she elects portability, the 2nd month after the effective date of the ported coverage.

§ 870.1204 Cost of insurance.

(a)(1) The cost of ported coverage is the cost shown in § 870.402(e).

(2) In addition to the premium payments for Option B, individuals with ported coverage must pay a monthly administrative fee, in an amount set by OPM.

(b) The Portability Office will establish a schedule for the premium payments. An individual with ported coverage must make payment to the Portability Office on a timely basis.

§ 870.1205 Electing portability for Option B.

(a) The employing agency must notify the employee/assignee(s) of the loss of coverage and the right to elect portability for Option B either before or immediately after the event causing the loss of coverage.

(b)(1) The employee/assignee(s) must submit the request to elect portability to the employing office and to the Portability Office within 60 days following the date of the terminating event (74 days if living overseas). A mailed notification or request is considered to be received 5 days after the date of the notification/request.

(2) An employee/assignee who fails to request portability within the required time frame is considered to have refused coverage.

(3) Ported coverage is effective the day after coverage as an employee ends.

§ 870.1206 Termination and cancellation of ported coverage.

(a)(1) Ported coverage stops April 24, 2002, subject to the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(2) Ported coverage stops at the beginning of the 2nd calendar month after the individual reaches age 80 or, if the individual is age 80 or older at the time he/she elects portability, the 2nd month after the effective date, subject to the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(b)(1) An individual with ported coverage can cancel coverage at any time. Exception: If the individual assigned his/her coverage as provided in subpart I of this part, only the assignee can cancel coverage.

(2) If an individual with ported coverage does not make a premium payment on time, the Portability Office will send him/her a notice stating that coverage will continue only if the individual makes payment within 15 days after receiving the notice (45 days if living overseas). If the individual does not make payment within this time frame, Option B coverage cancels.

(3) An individual whose ported coverage cancels, whether voluntarily or for nonpayment, does not get the 31-day extension of coverage or the right to convert.

§ 870.1207 Designations, assignments, and court orders.

(a)(1) If an employee has a valid designation of beneficiary on file at the time he/she elects portability, that designation remains in effect.

(2) An individual with ported coverage who wishes to file a designation of beneficiary must submit the form to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any designation of beneficiary remains in effect.

(b)(1) If an employee assigns his/her coverage before electing portability for Option B, that assignment remains in effect.

(2) If an individual with ported coverage wishes to make an assignment, he/she must submit the form to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any assignment of coverage remains in effect. Basic insurance and any Option A coverage acquired through the return to service are subject to the existing assignment.

(c)(1) If the employing office received a valid court order on or after July 22, 1998, that court order remains valid for the ported coverage.

(2) Anyone wishing to submit a court order relating to an individual with ported coverage must submit it to the Portability Office.

(3) If an individual with ported coverage returns to Federal service, any valid court order on file remains in effect.

(d) When an individual submits a request to elect portability for Option B coverage, the employing office must send the originals of all designations, assignments, and court orders on file to the Portability Office.

§ 870.1208 Return to active service.

(a)(1) When an individual with ported coverage returns to Federal service, the agency must notify the Portability Office.

(2) The Portability Office must terminate the ported coverage and send the originals of all designations, assignments, and court orders to the new employing office.

(b) The employee will get back the number of multiples of Option B he/she had before the terminating event. Exceptions:

(1) A person who cancels a multiple or multiples of Option B coverage after electing portability will get back only the number of multiples remaining.

(2) A person whose ported coverage cancels for nonpayment of premiums will not get back any Option B coverage automatically.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 245

RIN 0584–AB35

Direct Certification of Eligibility for Free and Reduced Price Meals and Free Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the determination of eligibility for free and reduced price school meals under the National School Lunch Program and School Breakfast Program or free milk in schools participating in the Special Milk Program. The rule codifies procedures that allow school food authorities and State agencies to certify children eligible for free meals or free milk based on information obtained directly from the appropriate State or local agency administering the Food Stamp Program, the Food Distribution Program on Indian Reservations or the Temporary Assistance for Needy Families Program (previously the Aid to Families with Dependent Children Program). This rule affects State agencies and participating school food authorities and households. These amendments respond to certain provisions in the Child Nutrition and WIC Reauthorization Act of 1989, comments received on the proposed rule published on May 28, 1991 (56 FR 24033), and provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. These amendments are intended to reduce administrative paperwork burdens, simplify the certification process for free and reduced price benefits, and facilitate the feeding of needy children.

EFFECTIVE DATE: These provisions are effective January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or phone (703) 305–2620.

SUPPLEMENTARY INFORMATION:

What Is the Background of This Rule?

Section 323 of Public Law (Pub. L.) 99–500 (Oct. 18, 1986) added section 9(b)(6) to the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.) (NSLA) to make children from food stamp households and children from Aid to Families with Dependent Children (AFDC) assistance units in States where the standard of eligibility for the assistance did not exceed 130 percent of the Federal poverty level automatically eligible for free meals or free milk. In keeping with this provision, households have been permitted to list their food stamp or AFDC case number on the free and reduced price application for school meals or milk in lieu of providing detailed household size and income information and a social security number for the adult household member signing the application. The statute also specified that proof of participation in the Food Stamp Program or the AFDC Program would be sufficient to verify eligibility. The regulations implementing these provisions are currently found at 7 CFR 245.5, 7 CFR 245.6 and 7 CFR 245.6a.

Subsequently, section 202(b)(1) of the Child Nutrition and WIC Reauthorization Act of 1989, Pub. L. 101–147, enacted on November 10, 1989, amended section 9(b)(2)(C) of the NSLA to allow school food authorities to certify children eligible for free or reduced price lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation that the children are members of either a household receiving food stamps or an assistance unit receiving AFDC. This certification process is commonly referred to as ''direct certification.'' That provision also specified that school food authorities that obtain such information shall use the information *only* for the purpose of determining eligibility for participation in programs under the NSLA and the Child Nutrition Act (42 U.S.C. 1771 et seq.) (CNA). Additionally, a statement adopted by key members of the House and Senate indicated their intent that school food authorities should provide parents the opportunity to decide whether or not they want their children to receive free meals by notifying parents that their children are eligible for free meal benefits and asking them to inform the school if they do not want their children to receive free meals. (135 Cong. Rec. H 6866 (Oct. 10, 1989) and S 14027 (Oct. 24, 1989)). The legislative history further indicated that school officials are to assume consent if they do not hear from the household within a certain number of days as specified by the Secretary.

On May 28, 1991, we published a proposed rule at 56 FR 24033 to amend 7 CFR part 245 to include direct certification. Moreover, we proposed to extend the direct certification provisions to include certification for free milk under the Special Milk Program operated in schools to maintain consistency between the school meal programs and the Special Milk Program in schools. Other institutions participating in the Special Milk Program are not authorized to use direct certification, because the statute limited direct certification to school food authorities. Further, although the law provided that the food stamp information or information provided under the AFDC Program may be used to determine eligibility for free or reduced price meals, under the proposed rule and this final rule, we deleted the references to reduced price meals because children who are members of food stamp households or members of households certified eligible for AFDC are automatically eligible only for free meal benefits under section 9(b)(6) of the NSLA.

We received fifty comments on the proposed rule during the 60-day public comment period. The majority viewed direct certification as a burden reduction measure and as a means to reach greater numbers of children. Please note that the May 28, 1991, rule also proposed to make the agreement

between the State agency and institutions operating the child nutrition programs and the school food authority's free and reduced price policy statement permanent documents. We addressed the permanency of the agreement and policy statement under a separate rulemaking published on September 20, 1999 at 64 FR 50735. This final rule addresses the direct certification provisions.

Is There Still an AFDC Program?

Since publication of the proposed rule, section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) replaced the AFDC Program, the Job Opportunities and Basic Skills Program and the Emergency Assistance Program with a block grant program under part A of title IV of the Social Security Act. Section 109(g) of PRWORA also made a conforming amendment to sections 9(b)(2)(C)(ii)(II) and (b)(6)(A)(ii) of the NSLA to remove references to AFDC and insert in its place, ''the State program funded under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.'' The new program is generally known as Temporary Assistance for Needy Families (TANF), although some States call the program by another name.

Thus, the automatic eligibility provisions and direct certification provisions that applied to AFDC households now apply to households certified eligible to participate in TANF in States in which the Secretary has determined that the standards under the State's TANF program are ''comparable to or more restrictive than those in effect [for AFDC] on June 1, 1995.'' We asked State agencies to notify the appropriate Food and Nutrition Service (FNS) regional office, in writing, whether the new program in their State is comparable to or more restrictive than their AFDC Program that was in effect on June 1, 1995, and indicate the information used to make the comparison. We also asked State agencies to inform FNS when there is a change that would no longer make households participating in TANF automatically eligible for free school meals. This final rule amends § 245.11(g) to include these requirements.

In States in which the State standards for TANF are comparable to or more restrictive than those for the AFDC program that was in effect on June 1, 1995, school officials may determine free meal or milk eligibility based on a TANF case number in lieu of detailed household size and income information and may also directly certify children in TANF households. Additionally, proof of participation in TANF is sufficient to satisfy any verification of eligibility efforts.

This rule also makes a number of changes throughout parts 210 and 245 to replace the term ''AFDC'' with the term ''TANF.'' Additionally, although not proposed, this rule removes the definition, ''AFDC assistance unit'' in § 245.2(a–1) and adds a new definition ''TANF'' at § 245.2(k). To avoid confusion, when describing the proposed rule, we will use TANF rather than AFDC as if TANF had been proposed.

The change from AFDC to TANF is required by PRWORA and is nondiscretionary. Additionally, in accordance with the NSLA, the change in programs will not affect current policies and provisions relating to automatic free meal eligibility in States in which the new program is comparable to or more restrictive than the AFDC program it replaced. Therefore, the FNS Administrator has determined that taking comments on this change is unnecessary in accordance with 5 U.S.C. 553.

How Is ''Documentation'' Defined?

Section 245.2(a–4) currently defines ''documentation'' as the completion of specific information on a free and reduced price application. For direct certification, we proposed to amend § 245.2(a–4) to include (1) a list of names of children, (2) a statement certifying that the children are members of households currently certified to receive food stamps or TANF benefits, (3) information in sufficient detail to match the children attending schools in the school food authority with the names of children identified as currently certified to receive food stamps or TANF benefits, (4) the signature of the official of the food stamp or TANF office, and (5) the date. Proposed § 245.6(b) also included these documentation provisions.

Several commenters were concerned that the proposed definition of documentation implies that the only way direct certification may be accomplished is through a computer match. They believed that flexibility is needed in the regulation to allow a variety of ways to ''directly certify'' in addition to a computer match. Other commenters suggested that the definition be rewritten to include a notice of eligibility originating from the food stamp/TANF office that is brought to the school by the household. Commenters stated that if this method were used, there would be no need for the school to provide households with a notice of approval and information about the opportunity to decline benefits, as required under proposed § 245.6(c)(1), since households would take the notice to the school only if they wanted benefits for their children.

The goal of direct certification is to reduce paperwork burdens while maintaining program integrity. We concur with commenters that flexibility is needed in the direct certification process. The proposed rule did not intend to limit direct certification to computer matches. This final regulation amends proposed §§ 245.2(a–4) (now § 245.2(a–3)) and 245.6(b) to make clear that school food authorities and food stamp or TANF offices without sophisticated computer systems may participate in direct certification. The amendments allow a member of a food stamp household or TANF household to deliver a letter or notice directly to the school containing the required documentation, as long as the required information is completed by officials from the food stamp or TANF office. In these instances, the household member would be acting as a conduit of information between the food stamp or TANF offices and the school, and the household would not be required to submit any additional information concerning eligibility.

One commenter suggested that we allow the food stamp or TANF office to notify households of their eligibility for free meals or free milk and include an abbreviated application for the household to complete and return to the school. We wish to emphasize that this is allowed, but is not considered a direct certification procedure. Rather, the household would simply be submitting a variation on the school's application. Requiring any kind of application is inconsistent with the direct certification procedure, because the food stamp or TANF office would not be able to certify that the information is accurate. Under direct certification, information is obtained from the agency administering the food stamp or TANF program.

Eight commenters maintained that the requirement that documentation include the signature of a food stamp or TANF official is too restrictive and that a signature may not always be available, particularly in the case of computer matches. Several commenters suggested that the requirement for a signature be expanded to include a signed agreement between the food stamp/TANF office or a signature facsimile like that produced

by a reproduction. We agree with these commenters. Therefore, this final rule (§ 245.2(a–3)(2)) specifies that the requirement for the signature of the food stamp or TANF official who certifies that the child is a member of a food stamp household or TANF household may be fulfilled with a copy of the individual's signature.

The proposed rule would have required documentation in sufficient detail to match the names of the children identified as receiving food stamp or TANF benefits with the names of children attending school in the school food authority. Two commenters believed that no further information beyond children's names and addresses is necessary, and one commenter asked that we more clearly define ''sufficient detail.'' We did not define the exact type of identifiers that would be required because we still believe that officials in the school food authority can best determine appropriate identifiers. Therefore, this final rule continues to allow school food authorities to determine which identifiers they will use. However, because several children in a large school may have similar or nearly similar names, we emphasize that it is essential that documentation include some type of specific identifying information that is available to both the school and the food stamp or TANF office to ensure that benefits are directed to the correct children. This information may include children's addresses, parents' names, birth dates, or other types of information, including social security numbers.

What About the Distribution of Letters/ Notices and Applications to Households About the Availability of Free and Reduced Price School Meals or Free Milk?

Section 9(b)(2)(B) of the NSLA and current § 245.5(a)(1) require school food authorities to distribute free and reduced price meal or free milk applications and letters announcing the availability of benefits to parents/ guardians of all children in attendance at the school at the beginning of the school year. We recognized, however, that there could be confusion and duplication if households with children directly certified for free meals or free milk later receive these applications and letters. To avoid this confusion and possible overlapping of activity, we proposed to amend §§ 245.5(a)(1) and 245.6(b)(3) to exempt school food authorities that implement direct certification from the requirement to send the notice or letter and application to those households determined eligible under direct certification. Rather, these households would receive a notice that their children had been determined eligible for free meals or free milk by direct certification. We cautioned that school food authorities that do not distribute the letter and application in such a way as to prevent overt identification of children determined eligible under direct certification would have to distribute the letter and application to *all* households.

One commenter suggested that the distribution of the letter to households and the application be limited to households of children who were eligible for benefits the previous year. All other households would receive a letter notifying them that applications are available and explaining how an application may be obtained, if necessary. According to this commenter, this procedure would greatly reduce paperwork. Another commenter advised that the proposed provision created a burden since the school food authority would have to personalize the distribution of letters/notices and applications and the notices of eligibility under direct certification. According to this commenter, the best use of the direct certification provision would be to reach children whose parents/guardians did not complete an application. Therefore, the letters or notices and applications should continue to be distributed to all households. School officials could then use direct certification after the application process to increase participation among eligible children whose households did not apply for school meals or milk. Two other commenters believed that it would be difficult to prevent overt identification unless direct certification is done prior to the new school year.

We believe that distributing the notice or letter and application only to households with children who were eligible the prior year and only notifying all other households of how to obtain an application would be contrary to the statute. Section 9(b)(2)(B) of the NSLA requires that applications be distributed to all parents or guardians of children in attendance at the school. We believe when a school food authority uses direct certification to supplement the application process that the notice of eligibility satisfies this requirement. The intent of the provision is to simplify the certification process. Neither the proposal nor this final rule prohibits the distribution of applications to households with children who are directly certified. Rather, this is just one implementation option. Therefore, school officials have a great deal of flexibility in deciding how to use direct certification. For these reasons, we are adopting the provision regarding the distribution of letters and applications as proposed. This provision is found at § 245.5(a)(1) and § 245.6(b)(2).

Must the State Agency Approve of School Food Authorities' Use of Direct Certification?

Proposed § 245.6(b) specifies that school food authorities may implement direct certification with State agency approval. Two commenters objected to the need for State agency approval because this implies that the State agency could decide to approve or disapprove school food authorities' use of direct certification. We agree with these commenters. Section 9 (b)(2)(C)(ii) of the NSLA specifically gives the option of implementing the direct certification provision to school food authorities, although State agencies may assume this responsibility for their school food authorities or otherwise assist in the direct certification process. Therefore, we have removed the proposed reference to State agency approval from § 245.6(b) in this final rule. However, as with the distribution and acceptance of applications, State agencies are responsible for the *manner* in which direct certification is implemented. Therefore, this final rule amends § 245.10(a)(3) to stipulate that a school food authority's procedures for direct certification must be made a part of its permanent policy statement, which may be amended as necessary.

Must Households Be Notified That They Have Been Directly Certified?

Under current § 245.6(b) and proposed § 245.6(c)(1), all households that submit *applications* for free and reduced price meals or free milk must be promptly notified of the approval or denial of their application for benefits. Households whose applications are denied, however, must be notified in writing. They also must be provided with information about how to appeal the determination and how to reapply should their circumstances change. Proposed § 245.6(c)(1) further specified that households with children determined eligible based on direct certification be provided with the following information in writing: (1) That the household does not have to complete a free and reduced price application at this time to establish the children's eligibility; (2) that the household must notify the school if they do not want their children to receive free meal or milk benefits; and (3) that the household must notify the school when they are no longer eligible for food stamps or TANF for their children.

Additionally, under the proposal, school officials would have to discontinue benefits as soon as possible if notified by the household that they do not want benefits for their children. Moreover, should the household subsequently notify school officials that they are no longer eligible for food stamps or TANF for their children, school officials would follow the notice procedures specified in § 245.6a(e). The notice informs the household that their free meal benefits will stop 10 days from the date the notice is sent and contains other pertinent information, such as appeal procedures. The household would also be informed that if it wishes to continue to receive free or reduced price benefits for its children, the household must complete an application giving household size and detailed income information.

A few commenters misinterpreted the notification requirements in proposed § 245.6(c)(1). They believed that the proposed rule expanded the notification requirements to require written notification of eligibility status to *all* households. We would like to clarify that, although we encourage school food authorities to notify all households in writing of the approval of their applications, school officials are required to provide *written* notification only to households approved under direct certification and to households who are denied benefits. For households determined eligible based on an application, school food authorities may provide notification in another manner, for example, by telephone or with the issuance of a free or reduced price ticket. The proposed regulation did not change this option.

We proposed that school food authorities notify households certified eligible under direct certification through written notification for the following reasons. First, because the household does not submit an application, the household could be confused when the child automatically receives free meals. Second, unless the household is specifically advised not to submit an application, it is likely to do so, which undermines the value of direct certification. Finally, a written notification is the only means to inform households that they may decline the benefits.

We recognize, however, that if households are provided a written document by the food stamp or TANF office to take to the school, a notice from the school notifying them of their eligibility may not be necessary. Additionally, the submission of the document by the household makes it clear that the household wishes to receive benefits. Thus, this final rule amends § 245.6(c)(1) to provide an exception to the written notification requirement. The school food authority is not required to provide a written notice of eligibility to households that transmit the documentation provided by the food stamp or TANF office to the school.

Must Households Be Notified That They Can Decline Benefits?

Several commenters addressed the possibility that households may decline free benefits. A few commenters did not believe that school food authorities should have to advise households that they may decline benefits, because this requirement is burdensome and expensive. Rather, they suggested that the names of all children certified under direct certification should be placed on the roster. Then if households really do not want meals for their children, the child can decline to pick up meal tickets. If households later decide that they do want free meals, the benefits are still available for the child without the need for the household to apply. One commenter asked for clarification of the type of documentation necessary to substantiate that households have declined benefits. Another commenter recommended that the number of days a school food authority has to terminate benefits after the household has notified the school that they do not want free benefits be a local decision. Finally, several commenters noted that they have concerns about providing benefits prior to consent, but most agreed that households will appreciate not having to complete another form to receive free meal or milk benefits for their children.

As noted previously, Congress intends that households are notified of their children's eligibility under direct certification and that they are given the opportunity to decline benefits. We do not believe it is sufficient to put this responsibility with the child by allowing the child to decline to pick up a ticket or token. Additionally we believe that a household's right to decline benefits must be honored by the school as expeditiously as possible. Therefore, in § 245.6(c)(1), the final rule maintains the proposed requirement to terminate benefits if the household indicates they do not want these benefits.

With respect to the method the household uses to decline benefits, the ideal method would be for the school to request that the household return the notice of eligibility under direct certification with an indication that the household does not want free benefits. However, if the household verbally declines benefits, this should be documented and be available for review. We are only mandating that the school maintain documentation for households that decline benefits, but not stipulating the form of that documentation. If the household notifies the school that it does not want benefits, a notice of adverse action is not needed. However, in accordance with § 210.7(c)(1)(ii), the school must make the change as soon as possible, but no later than 10 operating days from the date it receives the household's notification. In response to commenters who expressed concern about providing benefits prior to consent, we agree that this creates a potentially sensitive situation. Our experiences to date, however, indicate that households' refusals of benefits are rare, and we believe the participation of eligible children should not be delayed for this reason.

What Happens When a Household Notifies the School That They Are No Longer Eligible for Food Stamps or TANF Benefits?

When the household or the State or local agency administering the Food Stamp or TANF Program notifies the school that the household is no longer eligible for the Food Stamp or TANF program, § 245.6(c)(1) of this final rule requires the school food authority to follow the procedures in § 245.6a(e) *Adverse action* and inform the household that they must submit an application with income information to establish continued eligibility. The children must be provided free benefits during the 10-day advance notice of the pending change and through the appeal process.

What Records Must Be Kept?

The recordkeeping provisions in § § 210.9(b)(17), 215.7(d)(8) and 220.7(e)(14) require school food authorities to maintain free and reduced price applications on file for 3 years after the end of the fiscal year to which they pertain. Thus, we proposed to amend § 245.6(b) to require that school food authorities maintain the documentation obtained from the food stamp/TANF office for 3 years, because this documentation substantiates children's eligibility for benefits in lieu of the free and reduced price application. Consistent with other recordkeeping requirements, this information also shall be maintained beyond the 3 year period for as long as required to resolve issues raised if the school is audited. Only one commenter addressed this provision, and this commenter concurred with the 3 year retention provision. This final rule

maintains the 3 year requirement, although it can now be found at § 245.6(e).

We would like to remind readers that, when documentation substantiating eligibility determinations under direct certification is maintained at the school food authority level, the documentation must be retrievable by school. This is currently specified in § 210.9(a)(18).

Are There Any Confidentiality Concerns?

Proposed § 245.6(b)(2) specified that school food authorities must maintain the confidentiality of information obtained under the direct certification process. Such information could be used solely for the determination of eligibility for free meal or milk benefits.

Nine commenters addressed the issue of confidentiality of information under direct certification. For the most part, these commenters believed that school officials should be allowed to use the information obtained under direct certification for other purposes, such as for free books or vocational education. Four commenters stated that school food authorities should be allowed to add a release to the notice of eligibility sent to households, giving parents the option of allowing school officials to use the eligibility information for other purposes. One commenter believed that the release more appropriately should be included on the application households complete to receive food stamp or TANF benefits. This option would assure recipients that their personal information does not move from agency to agency without their knowledge or consent. Finally, one commenter asked that school officials be allowed to use aggregate data for school purposes which benefit the child.

Section 202(b)(1) of Pub. L. 101–147 amended section 9(b)(2)(C) of the NSLA to specify that school food authorities may use the information obtained directly from food stamp/TANF offices only for the purpose of determining eligibility for participation in programs under the NSLA and the CNA. However, section 108 of Pub. L. 103–448 further amended section 9(b)(2)(C) of the NSLA to allow limited use or disclosure of any information obtained from the free and reduced price application or information obtained from food stamp or TANF officials. We provided guidance on the use and disclosure of information about children eligible for free and reduced price meals in December 1998. A proposed rule on the issue will be published soon. Therefore, § 245.6(b)(1) of this final rule specifies that information about the child or household obtained directly from food stamp or TANF officials must be kept confidential and may only be used to determine free meal or milk eligibility or as otherwise permitted under section 9 of the NSLA.

How does Direct Certification Affect the Verification of Eligibility Requirement?

Current § 245.6a(a) requires school food authorities to verify a sample of approved *applications.* Under the proposed § 245.6a(a)(5), eligibility determinations based on direct certification obtained directly from the food stamp or TANF office would not be subject to this verification requirement. Although several commenters agreed that determinations made under direct certification should not be included in the verification requirement, one commenter believed that these certifications should still be counted as part of the universe for the purpose of calculating the sample size. We made this proposal because the client certification process for food stamps and TANF is more detailed than the process for applying for free/reduced price meal benefits and consequently may eliminate some of the need for verification.

We do not believe that direct certifications should be included in the formula when determining the number of applications which must be verified because under direct certification, there is no school meal or milk application and, therefore, nothing to select for verification. Consequently, the result of the commenter's suggestion would be to artificially inflate the number of applications to verify by including a large number of determinations not currently subject to verification. For these reasons, we did not accept this suggestion. We do note, however, that local officials may always verify more than the minimum number of applications and could elect to adopt this suggestion at the local level.

Are There Any Technical Amendments?

Subsequent to the publication of the proposed rule, we determined that households that participate in the Food Distribution Program on Indian Reservations (FDPIR) should be categorically eligible for free school meals or free milk. The FDPIR is authorized by Section 4(b) of the Food Stamp Act of 1977. Under this section, eligible households may elect to participate in either the Food Stamp Program or the FDPIR, but may not participate in both programs at the same time. Thus, since eligible households are afforded the option to participate in either program and may switch from one program to the other, we believe that households participating in FDPIR should be treated the same as if they were participating in the Food Stamp Program. Therefore, when applying for free and reduced price meals for their children, a household participating in the FDPIR may submit the child's name, their FDPIR case number or an equivalent identifier used by FDPIR and the signature of an adult household member to establish free meal or free milk eligibility. Additionally, documentation of participation in FDPIR is adequate to verify eligibility for free meals or free milk. In lieu of free and reduced price applications, the direct certification procedures described in this rulemaking may be extended to households certified to receive benefits under FDPIR.

To implement categorical eligibility for households participating in FDPIR, this rulemaking adds a definition of FDPIR to § 245.2. This rule will also add a reference to FDPIR to all provisions affecting food stamp and TANF households. We notified State agencies of our interpretation that the categorical eligibility and direct certification provisions extend to children from households participating in FDPIR through policy memoranda dated January 3, 1992 and August 27, 1992. We believe that this action is technical in nature and that prior notice and comment would be unnecessary and contrary to the public interest. For these reasons, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and (d), that good cause exists to waive the solicitation of public comments prior to codifying these amendments.

This rulemaking also corrects an omission in section 245.6a(a), which specifies the minimum number of applications that school officials must verify. In accordance with that paragraph, school officials using the focused sampling technique must verify a minimum of the lesser of 1 percent or 1000 applications selected from non-food stamp households claiming income within a specified amount and the lesser of one half of 1 percent or 500 applications of food stamp households that provide a case number. When Pub. L. 99–500 mandated the categorical eligibility of TANF households, we inadvertently neglected to amend section 245.6a(a) to include applications from households that provide an TANF case number when determining sample sizes. This rule corrects that omission and also references FDPIR. This correction is technical in nature and does not result in a substantive change.

Proposed § 245.6(c) included a provision that school officials may seek verification of eligibility and that school officials would take the income and frequency information provided by the household and calculate the household's total current income. This section also set forth the criteria under which school officials would approve households for free and reduced price meals or free milk. Three commenters suggested that the statement regarding verification appeared to be inappropriately placed in § 245.6(c). We concur with this observation and note that when the regulation implementing the Coordinated Review Effort was published in the **Federal Register** on July 17, 1991 (56 FR 32920), this statement was moved to § 245.6a(a), Verification requirements. Secondly, a final rule establishing requirements for free and reduced price applications published on July 24, 1991, (56 FR 33857) eliminated the requirement for households to indicate the frequency with which they receive individual income amounts, such as monthly, weekly, every 2 weeks and etc. Households are asked to report their monthly income by household member and source of the income. Accordingly, the language in § 245.6 of this final rule reflects this change.

Executive Order 12866

This final rule was determined non significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes a requirement 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, the Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have ''Federal mandates'' which may result in expenditures of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates of $100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. Most affected by this rulemaking will be State agencies and school food authorities. This rulemaking will increase administrative options for those entities and help streamline the overall free and reduced price eligibility administrative process.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program, School Breakfast Program and Special Milk Program the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures established pursuant to 7 CFR 210.18(q) and 220.14(e); school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process established pursuant to 7 CFR 235.11(f).

Executive Order 12372

This rule affects the School Breakfast Program, National School Lunch Program and Special Milk Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.553, 10.555 and 10.556, respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the reporting and recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) for parts 210 and 245 under control numbers 0584–0006 and 0584–0026, respectively.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—social programs, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 210 and 245 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

§ 210.9 [Amended]

2. In § 210.9(b)(18), remove the words ''Food Stamp or the Aid to Families with Dependent Children Programs'' at the end of the first sentence and add the words ''Food Stamp Program, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF)'' in their place.

3. In § 210.18:

a. Revise paragraph (g)(1)(i)(A)(4); and

b. Amend the last sentence of paragraph (g)(1)(i)(B) by removing the words ''food stamp or AFDC'' and add in their place the words ''food stamp, Food Distribution Program for Households on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF)''.

The revision reads as follows:

§ 210.18 Administrative reviews.

* * * * *

(g) *Critical areas of review.* * * *

(1) *Performance Standard 1 (All free, reduced price and paid lunches claimed*

for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.) * * *

(i) * * *

(A) * * *

(*4*) In the case where children are determined eligible for free lunches based on documentation from the local food stamp, Food Distribution Program on Indian Reservations (FDPIR) or Temporary Assistance for Needy Families (TANF) office which certifies that the children are currently members of households receiving benefits under the Food Stamp Program, FDPIR or TANF, determine that the certification from the Food Stamp Program, FDPIR or TANF is official; all the information required under § 245.6 of this part is complete; and such children were enrolled in the school under review during the review period.

* * * * *

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 is revised to read as follows:

Authority: 42 U.S.C. 1772, 1773, 1779; and 42 U.S.C. 1751–60.

2. In § 245.2:

a. Remove paragraph (a–1) and redesignate paragraphs (a–2), (a–3) and (a–4) as paragraphs (a–1), (a–2) and (a–3), respectively.

b. Revise newly redesignated paragraph (a–3);

c. Redesignate paragraph (b–1) as paragraph (b–2) and add a new paragraph (b–1);

d. Redesignate paragraph (k) as paragraph (l) and add a new paragraph (k); and

e. Revise the last sentence of newly designated paragraph (l).

The revisions and additions read as follows:

§ 245.2 Definitions.

* * * * *

(a–3) *Documentation means:*

(1) The completion of a free and reduced price school meal or free milk application which includes:

(i) For households applying on the basis of income and household size, names of all household members; income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income); the signature of an adult household member; and the social security number of the adult household member who signs the application or an indication that he/she does not possess a social security number; or

(ii) For a child who is a member of a food stamp, FDPIR or TANF household: the child's name and appropriate food stamp or TANF case number or FDPIR case number or other identifier; and the name and signature of an adult household member; and

(2) In lieu of completion of the free and reduced price application, information obtained from the State or local agency responsible for the Food Stamp Program, FDPIR or TANF which includes the name of the child; a statement certifying that the child is a member of a currently certified food stamp, FDPIR or TANF household; information in sufficient detail to match the child attending school in the school food authority with the name of the child certified as a member of a food stamp, FDPIR or TANF household; the signature or a copy of the signature of the individual authorized to provide the certification on behalf of the Food Stamp, FDPIR or TANF office, as appropriate; and the date. When the signature is impracticable to obtain, such as in a computer match, other arrangements may be made to ensure that a responsible official can attest to the data.

* * * * *

(b–1) *FDPIR* means the food distribution program for households on Indian reservations operated under part 253 of this title.

* * * * *

(k) *TANF* means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

(l) * * * However, if a food stamp or TANF case number or a FDPIR case number or other identifier is provided for a child, verification for such child shall only include confirmation that the child is included in a currently certified food stamp, TANF or FDPIR household.

3. In § 245.5:

a. Revise the first sentence of paragraph (a)(1) introductory text;

b. Remove the reference to ''§ 245.2(a–4)'' in paragraph (a)(1)(iii), and add a reference to ''§ 245.2(a–3) in its place;

c. Revise paragraphs (a)(1)(iv) and (a)(1)(vi).

The revisions read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) Except as provided in § 245.6(b), a letter or notice and application distributed on or about the beginning of each school year, to the parents of all children in attendance at school. * * *

* * * * *

(iv) An explanation that households with children who are members of currently certified food stamp, FDPIR or TANF households may submit applications for these children with the abbreviated information described in § 245.2(a–3);

* * * * *

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over $50 per month or $600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or TANF case number or a FDPIR case number or other identifier to establish eligibility for free meals or free milk for a child, of any termination of benefits for such children under the Food Stamp, FDPIR or TANF Programs.

* * * * *

4. In § 245.6:

a. Revise the section heading;

b. Revise the seventh sentence of introductory paragraph (a);

c. Revise paragraph (a)(1);

d. Redesignate paragraph (b) introductory text, paragraphs (b)(1) and (b)(2) and paragraph (c) as paragraph (c) introductory text, paragraphs (c)(2) and (c)(3) and paragraph (d) respectively;

e. Add new paragraphs (b) and (c)(1);

f. Revise newly redesignated paragraph (c) introductory text; and

g. Add a new paragraph (e).

The additions and revisions read as follows:

§ 245.6 Certification of children for free and reduced price meals and free milk.

(a) * * * However, if application is being made for a child who is a member of a food stamp, FDPIR or TANF household, the application shall enable the household to provide the appropriate food stamp or TANF case number or FDPIR case number or other identifier in lieu of names of all household members, household income information and social security number. * * *

(1) ''Section 9 of the National School Lunch Act requires that, unless your

child's food stamp case number/FDPIR case number or other identifier or TANF case number is provided, you must include the social security number of the adult household member signing the application or indicate that the household member signing the application does not have a social security number. Provision of a social security number is not mandatory, but if a social security number is not given or an indication is not made that the signer does not have such a number, the application cannot be approved. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp, TANF or FDPIR office to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims or legal actions if incorrect information is reported.'' State agencies and School Food Authorities shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974); and

* * * * *

(b) *Direct certification.* In lieu of determining eligibility based on information provided by the household on the free and reduced price meal or milk application specified in paragraph (a) of this section, school food authorities may determine children eligible for free meals or milk based on documentation obtained from the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or the TANF Program, hereafter referred to as direct certification. The documentation for direct certification shall include the information specified in § 245.2(a–3)(2). The food stamp, FDPIR or TANF office may provide school officials with a list which includes all required documentation, or documentation may be obtained through a computerized match in which computerized lists of names of children from food stamp, FDPIR or TANF households and other identifying information are matched against a list of names and other identifying information of schoolchildren. When computer matches are used or the signature of the food stamp, FDPIR or TANF official is otherwise impracticable to obtain, the signature of the food stamp, FDPIR or TANF official is not required. However, other arrangements must be made to ensure that a responsible official can attest to the data. Additionally, the food stamp, FDPIR and/or TANF office may provide food stamp, FDPIR and/or TANF households with individual notices which contain all required documentation. The household may then transmit the notice to the school.

(1) Information about the child or the household obtained directly from the food stamp, FDPIR or TANF office must be kept confidential and shall be used solely for the purpose of determining the child's eligibility for school meal or milk benefits, or as otherwise permitted by section 9 of the National School Lunch Act.

(2) School food authorities are not required to provide the letter specified in § 245.5(a) to the parents of children who are eligible for free meals under paragraph (b) of this section when the school food authorities distribute the letters or notices with application forms and the notice to households concerning eligibility for benefits under direct certification, specified in paragraph (c)(1) of this section, through the mail, individualized student packets, or other method which prevents the overt identification of children eligible for direct certification.

(c) *Determination of eligibility.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year may be served reimbursable free and reduced price meals or free milk. However, applications and documentation of direct certification from the preceding year may be used to determine eligibility only during the 30 operating days following the first operating day at the beginning of the school year, or during a timeframe established by the State agency, provided that any State agency timeframe does not exceed the 30 operating day limit. The school food authority must take the income information provided by the household on the application and calculate the household's total current income. When a household submits an application containing complete documentation, as specified in § 245.2(a–3)(1)(i), and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household must be approved for free or reduced price benefits, as applicable. When a household submits an application containing the required food stamp, FDPIR or TANF documentation, as specified in § 245.2(a–3)(1)(ii), the children in that household must be approved for free benefits. Additionally, when the school food authority obtains documentation from the State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or TANF Program that children are members of currently certified food stamp, FDPIR or TANF households, as specified in § 245.2(a–3)(2), the school food authority must approve such children for free benefits without applications from the households.

(1) *Notice of approval.* The school food authority must promptly notify the household of their children's eligibility and provide them the benefits to which they are entitled. Households approved for benefits based on documentation provided by the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program must be notified, in writing, that their children are eligible for free meals or free milk, that households must contact the school when their children are no longer eligible for food stamp, FDPIR or TANF benefits, and that no application for free and reduced price school meals is required at this time. The notice of eligibility must also inform households that they must notify the school if they do not want their children to receive free benefits. When the household transmits the notice of eligibility containing the above information and the documentation provided by the food stamp, FDPIR or TANF office to the school, the school food authority is not required to provide a separate notice of eligibility. Children from households that notify the school that they do not want free benefits must have their benefits discontinued as soon as possible. Any notification from the household declining benefits must be documented and maintained on file, in accordance with paragraph (e) of this section. Additionally, a school food authority that is notified by the household that they are no longer eligible to receive food stamp, FDPIR or TANF benefits must follow the procedures specified in § 245.6a(e), and inform the household that it must submit an application with income information to establish continued eligibility.

* * * * *

(e) The school food authority must maintain documentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.

5. In § 245.6a,

a. Amend the seventh sentence of paragraph (a) by removing the words ''of food stamp households that provided food stamp case numbers'' and add the words ''of food stamp, FDPIR or TANF households that provided a food stamp or TANF case number or FDPIR case number or other identifier'' in their place;

b. Revise paragraph (a)(2)(i);

c. Revise the second sentence of paragraph (a)(2)(iv);

d. Revise the fourth sentence of paragraph (a)(2)(v);

e. Revise the heading and first three sentences of paragraph (a)(3);

f. Add a sentence at the end of paragraph (a)(5); and

g. Revise the second sentence of paragraph (b)(3).

The revisions and addition read as follows:

§ 245.6a Verification requirements.

(a) * * *

(2) *Notification of selection.* * * *

(i) Section 9 of the National School Lunch Act requires that unless the child's food stamp case number/FDPIR case number or other identifier or TANF case number is provided, households selected for verification must provide the social security number of each adult household member;

* * * * *

(iv) * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting a food stamp, FDPIR or TANF office to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received and checking documentation produced by household members to prove the amount of income received. * * *

(v) * * * Selected households must also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp, FDPIR or TANF certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp, FDPIR or TANF household. * * *

(3) *Food stamp, FDPIR or TANF recipients.* On applications where households have furnished food stamp or TANF case numbers or FDPIR case numbers or other identifiers, verification shall be accomplished either by confirming with the local food stamp, FDPIR, or TANF office that each child, for whom application was made and a case number or other identifier was provided, is a member of a currently certified food stamp, FDPIR or TANF household; or by obtaining from the household a copy of a current ''Notice of Eligibility'' for the Food Stamp Program, FDPIR or TANF Program or equivalent official documentation issued by the food stamp, FDPIR or TANF office which confirms that the child is a member of a currently certified food stamp, FDPIR or TANF household. An identification card for either program is not acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp, TANF or FDPIR household, the procedures for adverse action specified in paragraph (e) of this section must be followed. * * *

* * * * *

(5) * * * Verification of eligibility is not required of households when the determination of eligibility was based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program, as described in § 245.6(b).

(b) *Sources of information.* * * *

(3) *Agency records.* * * * Information concerning income, household size, or food stamp, FDPIR, or TANF eligibility maintained by other government agencies to which the State agency, school food authority or school can legally gain access may be used to confirm a household's income, size, or receipt of benefits. * * *

* * * * *

6. In § 245.10, revise paragraph (a)(3) to read as follows:

§ 245.10 Action by School Food Authorities.

(a) * * *

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, if the school food authority has opted to determine eligibility for children from food stamp, FDPIR or TANF households based on documentation obtained from the State or local agency responsible for the Food Stamp, FDPIR or TANF Program, in lieu of an application, the school food authority shall include the specific procedures it will use to obtain the required documentation. Additionally, school food authorities that have implemented direct certification and that must provide households a notice of eligibility, as specified in § 245.6(b), must also include in their policy statement a copy of the notice to households regarding their children's eligibility under the direct certification provision.

* * * * *

6. In § 245.11, add a new paragraph (g) to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(g) The State agency must notify FNS whether the TANF Program in their State is comparable to or more restrictive than the State's Aid to Families with Dependent Children Program that was in effect on June 1, 1995. Automatic eligibility and direct certification for TANF households is allowed only in States in which FNS has been assured that the TANF standards are comparable to or more restrictive than the program it replaced. State agencies must inform FNS when there is a change in the State's TANF Program that would no longer make households participating in TANF automatically eligible for free school meals.

Dated: December 16, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33179 Filed 12–27–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

RIN 0584–AC23

Summer Food Service Program; Implementation of Legislative Reforms

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule, with request for comments.

SUMMARY: This interim rule amends Summer Food Service Program (SFSP) regulations to incorporate nondiscretionary changes made by the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. Program changes include easing restrictions of participation by private nonprofit

organizations and food service management companies, streamlining rules for schools to encourage Program sponsorship, reducing paperwork burdens for State agencies, and other provisions to improve Program operations. As required by law, these changes were implemented by the dates mandated by the statutes. This rule updates the SFSP regulations. In addition, this rule makes minor technical changes to the meal pattern requirements to conform the standards to those used in the National School Lunch Program and the School Breakfast Program.

DATES: This rule becomes effective January 27, 2000. We will consider comments that are submitted by the public. To be assured of consideration, comments must be postmarked on or before June 25, 2000.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302–1594. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m.–5 p.m. Comments will also be accepted via electronic mail submission at the following Internet address: CND Proposals@FNS.USDA.GOV. Since comments are being accepted on several rules at the same time, please refer to the title of this rule in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein or Linda Jupin at the above address or by telephone at (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Background

The Summer Food Service Program (SFSP) is authorized under section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761). Its primary purpose is to provide nutritious meals to children from low-income areas during periods when schools are closed for vacation.

In 1994, 1996, and 1998, substantive changes to the SFSP were made with the enactment of three public laws. These laws are briefly discussed below.

• The Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448) was signed on November 2, 1994. This law reauthorized the SFSP through Fiscal Year 1998 and amended a number of provisions in section 13 of the NSLA. These provisions were implemented by the Department via guidance issued to State agencies on December 8, 1994.

• The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) was signed on August 22, 1996. This statute, which made landmark changes to the Federal public assistance program known as the Aid to Families with Dependent Children (AFDC), also amended the NSLA and the Child Nutrition Act of 1966 (CNA). The Department informed State agencies of impending changes on August 13, 1996 and implemented the provisions relating to the SFSP on January 27, 1997, in the form of guidance provided to State agencies.

• The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) was signed on October 31, 1998. One provision affecting the SFSP amended the CNA and the remaining provisions amended the NSLA. The Department implemented the provisions affecting the SFSP on December 3, 1998 in the form of guidance provided to State agencies.

The following chart summarizes the statutory provisions of Pub. L. 103–448, Pub. L. 104–193, and Pub. L. 105–336 that are addressed in this interim rule:

Statute	Provision	Regulatory section affected
Pub. L. 103–448:		
Section 114(a)	Revised sponsor priority system	§ 225.6(b)(5).
Section 114(b)	Eliminated one-year waiting period for private nonprofit organizations (PNOs)	§§ 225.2 definition of PNOs, 225.6(a)(3)(iv)(B), and 225.14(d)(7)(iv).
Section 114(f)	Eliminated warning from PNO applications	§ 225.6(a)(5).
Section 114(e)	Reduced requirements States must include in their Management and Administration Plans (MAPs).	§ 225.4(d).
Section 114(d)	Reduced report of food management service companies (FSMC) to just the seriously deficient.	§ 225.8(d).
Pub. L 104–193:		
Section 703	Reduced frequency of submission of Free & Reduced Price Policy Statement	§ 225.6(c)(3).
Section 706(c)(1)	Reduced the number of meals that can be served each day at camps and migrant sites from 4 meals to 3 meals or 2 meals and 1 snack.	§ 225.16(b)(1)(i) and (b)(5).
Section 706(d)	Eliminated academic-year National Youth Sports Program (NYSP); allows NYSP site eligibility based on residence in ''area where poor economic conditions exist''.	§ 225.2 (definition of NYSP feeding site); and § 225.6(c)(2)(v).
Section 706(e)	Removed requirement that school food authorities conduct training before receiving the second month's advance program payment.	§ 225.9(c)(1)(i).
Section 706(f)	Provided new language on inspections for bacteria levels in meals	§ 225.6(h)(2)(v).
Section 706(g)	Allowed school sponsors to use offer versus serve option in school site locations.	§ 225.16(g).
Sections 706(j)	Removed requirements in MAPs	§ 225.4(d).
Section 706(k)	Removed specific training for PNOs	§ 225.7(a).
Section 109(g)	Permitted categorical eligibility for participants in State-funded programs that replace AFDC (i.e., TANF).	§§ 225.2 (definitions of ''documentation'' and ''TANF''), 225.6(c)(3), 225.15(e), and 225.15(f).
Pub. L. 105–336:		
Section 104(b)	Increased the maximum fine for program abuse from $10,000 to $25,000	§ 225.6(a)(5)(i)(A)–(C).
Section 105(a)	Increased the number of sites and total number of children that PNOs may serve.	§§ 225.2 (definition of PNO), 225.6(b)(6)(ii), and 225.14(d)(7)(ii).
Section 105(b)	Allowed PNOs to use commercial food vendors	§§ 225.2 (definition of PNO), 225.6(a)(3)(iii), 225.14(d)(7)(iii), and 225.15(g)(3).
Section 105(b)	Eliminated indication of sponsor interest requirement	§ 225.14(d)(7)(iv).
Section 105(c)	Expanded offer versus serve to all school sponsor sites	§ 225.16(g).

Statute	Provision	Regulatory section affected
Section 102(d) ...	Required single agreement and common claim form requirements for schools that operate multiple child nutrition programs, including the SFSP.	§§ 225.6(e) and 225.9(d).
Section 105(b) ...	Removed Federal requirement for FSMC registration and report of seriously deficient FSMCs.	§§ 225.6(g), 225.8(d), and 225.13(a).
Section 107(j)	Transferred authority of emergency shelters (homeless) from SFSP to CACFP	§§ 225.2, 225.6(c)(2)(ii), 225.6(d), 225.8(e), 225.14(d)(5), and 225.16.(b)(2).
Section 104(a) ...	Allowed higher SFSP reimbursement rates in Alaska and Hawaii	§ 225.9(d)(8).

The rest of this preamble discusses the specific statutory changes and the corresponding revisions to the SFSP regulations. The statutory changes are discussed under the program areas affected.

I. Private Nonprofit Organizations (PNOs)

Significant changes were made in the SFSP statutory framework governing PNO sponsorship and participation with the enactment of Pub. L. 103–448, Pub. L. 104–193, and Pub. L. 105–336. These revisions represent an acknowledgment that PNO sponsors, with adequate training and monitoring, can successfully operate the SFSP. The 1994 amendments (Pub. L. 103–448) sought to facilitate participation in SFSP by PNOs and to acknowledge their efforts to operate quality programs. These amendments to the NSLA revised the sponsor eligibility priority list, eliminated the one-year waiting period for PNO participation in certain areas, and ended the practice of including a criminal penalty warning statement on PNO application materials. With respect to PNO sponsors, the 1996 amendments (Pub. L. 104–193) lifted the mandate that State agencies must conduct training specifically for PNO sponsors participating in SFSP. The provisions in the 1998 amendments to the NSLA (Pub. L. 105–336) eliminated a number of restrictions that had been placed on PNO sponsors. By easing restrictions on PNOs to sponsor the Program, it was hoped that more low-income children would have access to nutritious meals during the summer months.

Following is a discussion of each statutory change made to PNO participation in the Program. Corresponding changes made to regulatory language are noted.

1. Sponsor Selection—Priority System

Section 114(a) of Pub. L. 103–448 amended section 13(a)(4) of the NSLA to revise the sponsor eligibility priority system. Previously, when more than one SFSP sponsor or potential sponsor proposed to provide meal service at the same site or in the same area, the regulations required that State agencies consider PNOs last behind other eligible applicants. This lack of priority given PNOs reflected the view that PNOs tended to be the most problematic of potential SFSP sponsors. The results of monitoring PNOs revealed that experienced PNO sponsors are as able in their administration of the SFSP as are other sponsors. In view of this information, Congress adopted a new priority system. With this revision, State agencies must consider eligible SFSP sponsor applicants in the following order: (1) Local school food authorities; (2) all other government sponsors and PNOs that have demonstrated successful program performance in a prior year; (3) new government sponsors; and (4) new PNOs. If a government agency and a PNO apply to serve the same area, we believe that State agencies should have the flexibility to make the approval determination.

Accordingly, this rule conforms the SFSP regulations at § 225.6(b)(5) to mirror the new order of priority established in the law that State agencies must use in approving applicants seeking to serve the same area or the same group of enrolled children. We also clarify in this section that State agencies must approve or deny applications on a case-by-case basis, when experienced government and PNO sponsors both apply to serve the same area.

2. Eliminating the One-Year Waiting Period

Section 114(b) of Pub. L. 103–448 struck the provision in section 13(a)(7)(C) of the NSLA requiring a one-year waiting period with respect to the participation of PNOs in certain areas. Previously, PNOs were under a prohibition from serving a site or an area during the 12 months after that area had been served by a school food authority or a government sponsor. Under the regulations, a waiver was allowed provided the State agency had determined that an experienced sponsor was discontinuing meal service to an area, regardless of the availability of a PNO to serve that area. Opponents of the waiting period maintained that a geographical area in critical need of SFSP meal service could remain unserved for 12 months with its imposition.

Accordingly, this rule conforms the regulations to the statutory elimination of a waiting period before a PNO may apply to operate SFSP sites previously operated by schools or government sponsors. In doing so, we have removed references to the one-year waiting period in the definition of a PNO at § 225.2, and in §§ 225.6(a)(3)(iv)(B) and 225.14(d)(7)(iv).

3. Eliminating Warnings on PNO Application Materials

In earlier years of Program operation, large PNO sponsors, particularly those contracting with commercial food service companies and serving sizable numbers of children at many sites, were found to have committed Program fraud. Concern about fraudulent PNO sponsors prompted Congress to mandate that a warning of the criminal provisions, penalties, and termination procedures for Program violations must be printed in bold lettering on applications provided to PNOs. More recent monitoring showed that PNO sponsors administer SFSP with similar levels of error as other types of sponsors with comparable experience. In view of this updated information, section 114(f) of Pub. L. 103–448 deleted the requirement in section 13(q)(2) of the NSLA for the warning statement on applications provided to PNOs. State agencies may include warning statements on application materials, as long as the warning appears on all sponsor applications. However, State agencies may not single out PNO sponsors to receive warnings about Program misconduct and the consequences on application materials. It should be noted, however, that the required certification statements specified at § 225.6(a)(4) and the procedures for program termination of any site or sponsor determined to be seriously deficient in its administration of the SFSP continue to apply.

Accordingly, to conform with the revision in the statute, we have deleted specific references to PNOs at § 225.6(a)(5) of the SFSP regulations. We

have made two other changes to § 225.6(a)(5):

- To indicate a State agency's option to include criminal provisions, penalties, and termination procedures in application and preapplication materials; and,
- To quote the most current statutory language containing maximum fines that may be levied against violators.

Fines for having been criminally convicted of fraud, embezzlement or similar improprieties in connection with Program activities have been revised upward from $10,000 to $25,000 in accordance with section 104(b) of Pub. L. 105–336, which amended section 12(g) of the NSLA. We note with interest that Congress did not amend section 13(o) of the NSLA, which provides language for criminal fines and penalties in connection with submitting false information on applications and other program-related reports. The maximum fine at section 13(o) of the NSLA for these crimes remains at $10,000. However, section 12(g) of the NSLA specifically includes all programs covered under the NSLA and the CNA. In the absence of any reference to this apparent conflict in any conference or committee reports, we have decided to include the language from section 12(g) rather than section 13(o) of the NSLA. The statutory language at section 12(g) of the NSLA contains the most recent Congressional statement with regard to criminal fines and penalties that may be levied against program violators. In addition, it is preferable, in our view, to maintain consistency across all Child Nutrition Programs in this matter.

4. Monitoring and Training

Prior to the 1994 amendments to the NSLA, State agencies were required to establish and implement an ongoing training and technical assistance program specifically for PNOs. The training focused on program requirements, procedures, and accountability for PNO sponsors. Section 706(k) of Pub. L. 104–193 struck the requirement in section 13(q) of the NSLA for special PNO sponsor training.

Accordingly, this rule removes the special training requirements outlined in § 225.7(a) of the SFSP regulations for PNO sponsors. However, State agencies remain responsible for providing training and technical assistance to all SFSP sponsors, including PNOs, as described in this paragraph of the Program regulations.

5. Numbers of Sites and Children Served

A priority of the 1998 reauthorization statute was to increase SFSP participation and aid eligible sponsors in reaching more needy children. Thus, section 105(a) of Pub. L. 105–336 amended section 13(a)(7)(B)(i) of the NSLA to modify the limit on the number of sites a PNO may operate as well as the number of children a site may serve. With this modification, a PNO may be approved by a State agency to operate up to 25 SFSP sites, in any combination of urban or rural sites. Also, the previous 2,500 limit on the total daily attendance for all PNO sponsor sites was lifted. However, Congress kept both the statutory limit of 300 children that PNOs may serve at any one site, and the provision allowing State agencies to waive that limit and allow up to 500 children to be served by PNOs at any one site.

Accordingly, this rule conforms the SFSP regulations at §§ 225.2 (the definition of a PNO), 225.6(b)(6)(ii), and 225.14(d)(7) to the statutory revisions concerning the number of sites and number of children that PNOs may serve with State agency approval.

6. Authority to Obtain Meals From Commercial Vendors

Section 105(b) of Pub. L. 105–336 removed section 13(a)(7)(B)(ii) and amended section 13(l)(1) of the NSLA. The effect of these changes is to end prohibition on PNO sponsors from contracting with food service management companies for the furnishing of meals. Ending the prohibition on commercial contracting should improve program access. In particular, rural areas should benefit from increased access to commercial vendors, since non-commercial vendors are more limited in those localities. With this action, PNO sponsors have the options of preparing meals themselves, or purchasing unitized meals from schools, public facilities, or commercial vendors.

Accordingly, to conform to this revision in the NSLA, we have revised the following sections in the SFSP regulations: §§ 225.2 (the definition of a PNO), 225.6(a)(3), 225.14(d)(7), and 225.15(g)(3).

7. Indication of Interest Requirement

Section 105(b) of Pub. L. 105–336 also struck the requirement in section 13(a)(7)(B)(iii) of the NSLA that limited PNO sponsors to SFSP participation only in areas where a school food authority or a government sponsor had not indicated an interest in operating the Program by March 1 of each year. As with the previous two amendments, improving access to nutritious meals for poor children was the goal of eliminating this qualifying condition for PNO sponsors.

Accordingly, we have eliminated reference to the March 1 indication of interest requirement in §§ 225.2 (the definition of a PNO) and 225.14(d)(7)(iv)

II. Paperwork Reduction

1. Management and Administration Plans

In an ongoing effort to simplify the administration of the SFSP and reduce paperwork burdens, Pub. L. 103–448 and Pub. L. 104–193 amended section 13(n) of the NSLA to decrease the number of areas that State agencies must address in their management and administration plans. The laws eliminated the following eight criteria from the management and administrative plan:

- The State's schedule for application by sponsors;
- The actions to be taken to maximize the use of meals prepared by sponsors and the use of school food service facilities;
- The State's plan and schedule for registering food service management companies;
- The State's plan for determining the amounts of program payments to sponsors and for disbursing such payments;
- The State procedure for granting a hearing and prompt determination to any sponsor wishing to appeal a State's ruling denying the sponsor's application for program participation or for program reimbursement;
- The State's needs assessment plan;
- The best estimate of the number of sponsors and children expected to participate; and
- The *schedule* for providing technical assistance and training to eligible sponsors.

With this action, paperwork was reduced without compromising the operational and financial management of the Program.

Accordingly, this rule makes conforming revisions to § 225.4(d) of the SFSP regulations. This rule also makes a technical change to this paragraph of the regulations due to the expiration of an outreach requirement made by Pub. L. 101–147. That law deleted the requirement that each State agency include a description of its plans to inform private nonprofit organizations of their potential eligibility to participate in SFSP. Finally, outdated references to implementation of procurement monitoring requirements, health inspections, and meal quality tests are also deleted from this section. With these revisions, eight criteria remain for inclusion in management and administration plans. They are:

- The State's administrative budget for the fiscal year;
- The State's plans to use Program funds and any additional State funds to reach needy children;
- The State's plans for providing technical assistance and training eligible sponsors;
- The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies;
- The State's plan for action against Program violators;
- The State's plan for ensuring fiscal integrity of sponsors not subject to auditing requirements.;
- Tthe State's plan for ensuring compliance with the food service management company procurement monitoring requirements; and
- An estimate of the State's need, if any, for funds to pay for health inspections and meal quality tests.

2. Free and Reduced Price Policy Statement

In a statutory change applicable only to school food authority SFSP sponsors, Section 703 of Pub. L. 104–193 amended section 9(b)(2)(D) of the NSLA to eliminate the requirement for annual submission of a free and reduced price policy statement to the State agency by a school food authority. After the initial submission, the school food authority need not submit a policy statement in subsequent years unless there is a substantive change in the free and reduced price policy of the school food authority.

As specified in the amendment, a routine policy change, such as an annual adjustment of the income eligibility guidelines for free and reduced price meals, would not necessitate the submission of a policy statement by the school food authority. However, a State agency may determine which changes are significant enough to justify a policy statement revision. Circumstances that might trigger a resubmission include when a sponsor designates new approval or hearing officials, when application collection procedures change, or when significant revisions are made in the media release, the notice to households, or the income eligibility statements.

Accordingly, this rule revises § 225.6(c)(3) of the SFSP regulations to reflect the change in the free and reduced price policy statement submission requirement. The revised regulations state that each new applicant sponsor must submit a statement of its policy for serving free meals at all sites under its jurisdiction. After the initial submission, a school food authority sponsor applying to continue program participation need revise its statement only when one or more substantive changes have been made in its nondiscrimination policies.

III. Food Service Management Companies

1. Registration Requirement

Section 105(b)(2)(A)(i)(II) of Pub. L. 105–336 removed the Federal requirement for registering food service management companies and the specific standards for the registration in section 13(l)(2) of the NSLA. However, Congress allowed States the discretion to require registration and to implement their own registration procedures. Section 105 (b)(2)(C) of Pub. L. 105–336 also removed the requirement formerly in section 13(l)(3) of the NSLA that the Secretary maintain a list of food service management companies that have been seriously deficient while participating in the SFSP.

Accordingly, this rule revises § 225.6(g) to make the registration of food service management companies optional rather than mandatory. Also, the State agency reporting requirement concerning food service management companies at § 225.8(d) is removed. To conform the appeal procedure requirements to the optional nature of registration, we have revised paragraph (a) of § 225.13.

2. Food Service Management Company Contract Requirements

Section 706(f) of Pub. L. 104–193 amended section 13(f)(5) of the NSLA by making a technical change to existing language on requirements for inspections of bacteria levels in SFSP meals. The new, more general language requires that contracts between SFSP sponsors and food service management companies include mandatory periodic inspections of meals in order to determine bacteria levels present in meals and conformance with standards set by independent agencies or the local health department for the locality in which the meals are served.

Accordingly, this rule revises § 225.6(h)(2)(v) to reflect this technical change in the inspections and certifications included in contracts between SFSP sponsors and food service management companies.

IV. School Food Authorities

1. Advance Program Payments

Section 706(e)(2) of Pub. L. 104–193 amended section 13(e)(1) of the NSLA to alter the policy governing advance reimbursement payments for SFSP school sponsors. The amendment to the NSLA exempts school food authorities from the requirement that sponsors and sites conduct training before receiving an advance of program payments for their second month of operation.

Before this amendment, a State agency was required to certify that all sponsors had conducted training for SFSP personnel on program requirements before releasing the second month's advance operating costs' payment. Providing the payments helps sponsors to meet program expenses, as they occur, and aids them in maintaining a positive cash flow.

This provision in Pub. L. 104–193 has simplified reporting for school food authorities and State agencies. However, the training requirements that school food authorities must fulfill were not affected. In addition, this exemption does not apply to requests for advances on administrative costs. To qualify for a second advance payment for administrative costs, all sponsors, including schools, must continue to certify that their programs operate in accordance with their approved administrative budget.

Accordingly, this rule revises SFSP regulations at § 225.9(c)(1)(i) to exclude school food authorities from the requirement that sponsors must have conducted training for all sponsor and site personnel to be eligible for their second advance operating payments.

2. Offer Versus Serve

The 1996 and 1998 statutes extended the ''offer versus serve'' provision to school food authorities that are operating SFSP sites. The offer versus serve option has long been a fixture in the National School Lunch Program (42 U.S.C. 1758(a)(3)). Section 706(g) of Pub. L. 104–193 amended section 13(f)(7) of the NSLA to permit school SFSP sponsors to use the offer versus serve option only at school sites, on the same basis as the option is used during the school year under the NSLP. Later, section 105(c) of Pub. L. 105–336 amended the same section of the NSLA to expand the offer versus serve option further by allowing its use at any site operated by a school food authority.

This meal planning option provides children the opportunity to refuse either one or two food items they do not intend to consume. Its use has aided schools in reducing plate waste and food costs in the school meals programs. The option can also promote choice and menu variety as well as enhance food service productivity. Schools with adequate cafeteria facilities and proper supervision are especially able to increase their productivity under offer versus serve.

In implementing the offer versus serve option in SFSP, lunches and suppers served in schools must meet the appropriate meal service requirements and nutrition standards of their NSLP, and breakfasts must conform with SBP meal service requirements. The option is not permitted for snacks. In addition, schools must have utilized the option during the school year when serving school meals in order to use it under SFSP. Each child must be offered a complete meal and the serving size of each item must equal the minimum quantities specified in NSLP and SBP regulations. SFSP participants may refuse one or more items of a meal, but they may not be encouraged to decline offered items.

With respect to reimbursement, SFSP meals served under the offer versus serve option are eligible for the same reimbursement as other SFSP meals. This option does not alter the requirement that school sites with accredited summer school programs should participate in the NSLP and in that event are not eligible to operate SFSP. A SFSP site operated in a school must open its food service to all children residing in the area served by the site.

Accordingly, we have added a new paragraph to § 225.16(g) that permits a school food authority to use the ''offer versus serve'' option at the SFSP sites it operates. This means that a child may refuse one or more items of a meal that he/she does not intend to consume. A school food authority must apply this option under its school meal program rules. The regulatory language also clarifies that the amount of payments made to a school for a meal will not be affected by the refusal of an offered item.

3. Single Permanent Agreement/ Common Claims Form

Section 102(d) of Pub. L. 105–336 added section 9(i) to the NSLA to establish two requirements with respect to school food authorities which administer any combination of the Child Nutrition Programs under the same State administering agency. First, the State agency must use a single State/ local agreement for all programs operated by the school food authority under that State agency. This also means that multiple programs operated under an alternate State agency must be combined into a single agreement. While these agreements are permanent, they may be amended as necessary. Second, a State agency must use a common reimbursement form to claim meals under all of the programs. Previously, single agreements and common claim forms were permitted at State agency option for school food authorities administering multiple Child Nutrition Programs under a single State agency.

Congress intended these provisions to provide both State agencies and school districts with additional administrative flexibility. In the Conference Report for Pub. L. 105–336, the Conference Committee stated that when the same school food service personnel administer the SFSP as well as the school meal programs, the State agency need not conduct a review of the summer program in the same year in which the school food service operations have been reviewed and determined to be satisfactory. The Conference Committee expected this flexibility to result in savings at the State level, but noted that States may conduct additional reviews when they deem it appropriate.

Implementing this provision, we notified State agencies in December 1998 of a general waiver for two years for this provision as it pertains to claims, because many State agencies have insufficient computer resources to make the necessary changes due to the potential difficulties rising from the preparations for the year 2000. We also provided a waiver of the requirement for single agreements until the school year 1999–2000, since agreements for the 1998–1999 school year had already been signed prior to the passage of Pub. L. 105–336.

This rule revises § 225.6(e) to require the use of single permanent agreements for SFSP school sponsors that report to a single State administering agency. We have also revised § 225.9(d) to require the use of a single claim form for requesting reimbursement for meals or snacks served under multiple child nutrition programs. In addition, we have revised)225.7(d)(2) to include the provision for State agency review of SFSP sites that are operated by school food authorities also operating NSLP.

V. Temporary Assistance for Needy Families (TANF)

Section 109(g) of Pub. L. 104–193 struck all references in the NSLA to the former Aid to Families with Dependent Children (AFDC) program, and inserted the term ''State program-funded''. This new terminology referred to the block grant program, TANF, that replaced AFDC. The summary effect of this provision is that children who had been categorically eligible for free SFSP meals under AFDC, continue that same eligibility if they are now receiving State-funded (TANF) benefits. The stipulation is that the State-funded program has to have the same or more restrictive eligibility rules than the AFDC program had in effect on June 1, 1995.

Establishing categorical eligibility for TANF households requires the completion of an abbreviated income eligibility statement. Sponsors are allowed to determine free meal eligibility using information obtained from the TANF agency. The movement to a block grant assistance program does not modify existing SFSP eligibility procedures for households receiving benefits under the State-funded program. However, as stated earlier, the State-funded program eligibility rules must be comparable or more restrictive than the AFDC rules that were in effect on June 1, 1995.

In addition to the name change from AFDC to TANF, we are amending the list of program benefits that trigger automatic eligibility to receive free meals in the SFSP to include the Food Distribution Program on Indian Reservations (FDPIR). The FDPIR has the same income standards as the Food Stamp Program; the primary difference between the two programs is that FDPIR participants receive USDA commodities instead of food stamps. Procedurally, FDPIR households apply for SFSP benefits by providing their FDPIR identification numbers on the free and reduced price application forms, in lieu of family and income information.

Accordingly, this interim rule makes the following revisions: The definition of ''AFDC assistance unit'' is removed at § 225.2 and all references to AFDC are removed in this part; new definitions of ''documentation'', ''FDPIR household'', and ''TANF'' are added at § 225.2; §§ 225.6(c)(3), 225.15(e), and 225.15(f) are amended to indicate that children of families receiving food stamp, FDPIR, or TANF benefits are automatically eligible for free meals in SFSP. Finally, we have revised § 225.15(f) by simplifying the language where possible and reorganizing the information to improve the readability of information that must be printed on the application for Program benefits or must be given in written materials to applicant households. A conforming change is made to the definition of ''current income'' in § 225.2.

VI. National Youth Sports Program (NYSP)

Section 706(d) of Pub. L. 104–193 struck the provision in section 13(c) of the NSLA allowing SFSP participation by NYSP participants during the academic year. The NSLA was further amended to specify that NYSP children are eligible for free meals on showing

residence in areas in which poor economic conditions exist or by showing income eligibility statements enrolling them in the NYSP.

The NYSP is a program of supervised sports training for low-income youths, administered by the National Collegiate Athletic Association through grant awards by the U.S. Department of Health and Human Services. In 1988, Congress extended SFSP sponsor eligibility to public and private nonprofit colleges and universities that participate in NYSP. The following year, Congress allowed year-round SFSP participation by college and university sponsors that had implemented drug awareness and counseling projects as part of NYSP. These sponsors could receive SFSP reimbursement for as many as two meals per day on no more than thirty days between October 1 and April 30.

With the enactment of section 706(d) of Pub. L. 104–193, effective August 22, 1996, authority expired for academic-year participation in SFSP by NYSP sponsors. Thus, NYSP sponsors may participate in the SFSP only during the months of May through September and are subject to the same rules governing other sponsors.

This rule removes the definition in § 225.2 of ''Academic-Year NYSP'' and all references to ''academic year'' or ''NYSP sponsors participating during the months of October through April'' from this part.

With regard to the issue of NYSP site eligibility, section 706(d) of Pub. L. 104–193 amended the NSLA to specify that all participants at a NYSP site may receive reimbursable SFSP meals, if at least 50 percent reside in areas where poor economic conditions exist, or if at least 50 percent are individually determined to meet income eligibility guidelines. With this modification in the eligibility criteria, NYSP sponsors may qualify a potential site for program participation using either school data or census data. Such data would reveal that at least 50 percent of the children in the local area from which the site would draw its attendance are eligible for free and reduced price meals. NYSP sponsors may also collect free and reduced price program applications to document the site's eligibility.

Accordingly, this rule revises the definition of ''NYSP feeding site'' at § 225.2 and the application requirements at § 225.6(c)(2)(v) to specify that sites may be qualified for program participation by means of enrollment or area conditions.

VII. Consolidated Benefits for Homeless Children

Section 107(j)(2)(A) of Pub. L 105–336 amended sections 13(a)(3)(C) and 17 of the NSLA by transferring authority over SFSP homeless sites to the Child and Adult Care Food Program (CACFP). Section 107(j)(2)(C)(i) of Pub. L. 105–336 also abolished the Homeless Children Nutrition Program under section 17B of the NSLA. Section 107(g) and added a new paragraph (q), ''Participation by emergency shelters'', to section 17 of the NSLA to consolidate the administration and delivery of benefits to homeless children under a single program. Moving homeless sites from SFSP into CACFP has provided an opportunity to expand the delivery of important nutrition benefits to children through the age of 12 because CACFP benefits are provided year-round. It allows sponsors to serve each eligible child up to three meals or two meals and one snack, each day.

This change was effective July 1, 1999. We issued guidance to State agencies on March 30, 1999, on the implementation of provisions concerning homeless children in CACFP and the transition of program authority from the SFSP to CACFP. We urged State agencies to encourage sponsors of homeless sites participating in the SFSP to apply to participate in CACFP in order to continue receiving meal benefits for children after June 30, 1999. It should be clarified, however, that a homeless shelter may still operate the SFSP, but it must meet other criteria as an open or enrolled SFSP site, as described in § 225.6(c) of the regulations. There no longer exists a special category of homeless SFSP sites.

This rule implements the transfer of homeless provisions from the SFSP to the CACFP by deleting references to homeless emergency shelters found at §§ 225.2, 225.6(c)(2), 225.6(d), 225.8(e), 225.14(c)(3), 225.14(d)(5), 225.15(a)(2), and 225.16(b)(2).

VIII. Program Payments

1. Per-Meal Reimbursements

Section 706(b) of Pub. L. 104–193 amended section 13(b) of the NSLA to set the reimbursement rates for each breakfast, lunch, snack, and supper served in the SFSP. It also required an adjustment in the rates on January 1, 1997, and each January 1 thereafter to the nearest lower cent increment, based on the changes in the Consumer Price Index for all Urban Consumers for the previous 12-month period (ending November 30). The stipulation of the law that reimbursement rates be adjusted to the nearest lower cent represents a change from the previous requirement of rounding down to the nearest quarter cent.

The per-meal payment changes made by Pub. L. 104–193 do not require a corresponding amendment of the SFSP regulations. The adjustment of the reimbursement rates was reflected in the SFSP Rates Notice that was published in the **Federal Register** on January 9, 1997 (63 FR 71616).

2. Adjustments to Program Reimbursement Rates for Alaska and Hawaii

Section 104(a)(1) of Pub. L. 105–336 amended section 12(f) of the NSLA to allow adjustments to SFSP rates for sponsors in Alaska and Hawaii. The Department has long had the statutory authority to make these adjustments in the other child nutrition programs. The State agencies in Alaska and Hawaii have already demonstrated the higher cost of providing meals in those areas in the context of the other Child Nutrition Programs, and the Department has adjusted rates for those States.

Through the 1998 reauthorization statute, this authority was extended to SFSP. Beginning January 1, 1999, SFSP operating and administrative rates were adjusted upward to reflect the higher cost of providing meals in Alaska and Hawaii. The adjustments were announced in the annual SFSP Rate Notice that was published in the **Federal Register** on December 29, 1998 (63 FR 71616).

Accordingly, this rule revises § 225.9(d)(8) to reference the higher reimbursement rates that are provided to Alaska and Hawaii.

IX. Number of Meals and Meal Pattern Requirements

1. Number of Meals for Camps and Migrant Sites

Section 706(c)(1) of Pub. L. 104–193 amended section 13(b)(2) of the NSLA to reduce the number of meals per day that camps and migrant feeding sites may claim for reimbursement. Congress stipulated that these sites may only be reimbursed for up to three meals or two meals and one snack per day. Previously, these sites were eligible for up to four meals per child per day. This reduction more closely aligns reimbursable meals for sponsors of camps and migrant sites with the reimbursements that sponsors of other SFSP sites may claim on a daily basis. We notified State agencies of this change on August 13, 1996 by a guidance memorandum.

Accordingly, we have revised paragraphs (b)(1)(i) and (b)(5) in

§ 225.16 to conform to this statutory change.

2. Conforming Changes in Nomenclature and Meal Pattern Requirements

Finally, we are making two revisions in this rule to update the language in this part to conform to changes in other Child Nutrition Programs.

First, we have changed the use of the word ''supplement'' or ''supplements'' to ''snack'' or ''snacks'', which are the preferred terms to use in reference to the light meal that is served between lunch and supper in the SFSP. While the NSLA uses the term supplement, we believe most people are more familiar with the term snack. This change is made wherever these terms appear throughout this part. This language conforms to the new Child Nutrition Program that was authorized by sections 107(h) and 108(a)(1) and (2) of Pub. L. 105–336 and that is referred to the ''Afterschool Snack Program'' within the NSLP, section 17A(a) of the NSLA (42 U.S.C. 1766a(a)), and the ''At-Risk Afterschool Care Program'' within the CACFP, section 17(r) of the NSLA (42 U.S.C. 1766(r).

The second change we have made in this rule is to conform the egg to meat or meat alternative equivalencies in the SFSP meal patterns for breakfast, lunch, snack, and supper to those equivalencies used in the NSLP at § 210.10(k)(2) or the School Breakfast Program (SBP) at § 220.8(g)(iii)(B)(a). A similar revision is being made to these equivalencies in the CACFP in another rulemaking. These minor revisions to the meal pattern requirements have been made in § 225.16 of the SFSP Regulations.

Currently, the egg to meat/meat alternate equivalencies at § 225.16(d) of the SFSP regulations, allow one large egg to equal either one ounce or two ounces of meat/meat alternates, depending on the meal being served. However, the regulations for the NSLP and the SBP include the following standard egg to meat/meat alternate equivalencies: one large egg to two ounces of meat/meat alternate and one-half large egg to one ounce of meat/meat alternate. Accordingly, we have revised § 225.16(d) to reflect these equivalencies. We believe that this change, though minor in scope, increases consistency in the standards across child nutrition programs. It should also eliminate any confusion that variable equivalencies among the child nutrition programs may have caused.

X. Procedural Matters

Executive Order 12866

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

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires 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, the Food and Nutrition Service 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance under No. 10.559. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notices (48 FR 29114 and 49 FR 2276), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. Simplifying and streamlining the administration of the SFSP is the intended effect of this rule when implemented.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''**DATES**'' section of the preamble of the rule. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures available through State or local governments. SFSP administrative procedures are set forth at: (1) 7 CFR 225.13, which outlines appeals procedures for use by a sponsor or a food service management company; and (2) 7 CFR 225.17 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and sponsors.

Paperwork Reduction Act

This interim rule seeks to reduce the reporting requirements for State agencies and service institutions administering the SFSP. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Food and Nutrition Service announces its intention to request the Office of Management and Budget's (OMB) review of the information collections associated with the implementation of the interim rule, Summer Food Service Program: Implementation of Legislative Reforms.

Written comments on this notice must be received by February 28, 2000, to be assured of consideration.

Comments concerning the information collection aspects of this interim rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Lori Schack, Desk Officer for FNS. A Copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commentors are asked to separate their comments on the information collection requirements from their comments on the remainder of this interim rule.

OMB is required to make a decision concerning the collection of information contained in this interim rule between 30 and 60 days after the publication of this document in the **Federal Register**.

Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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 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.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Title: Summer Food Service Program.

OMB Number: 0584–0280.

Expiration Date: 12/31/99.

Type of Request: Revision of a currently approved collection.

Abstract: The interim rule, Summer Food Service Program: Implementation of Legislative Reforms, amends the regulations for the Summer Food Service Program (SFSP) to incorporate changes made by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), the Personal Responsibility and Work Reconciliation Act of 1996 (Pub. L. 104–193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336). Section 114(e) of Public Law 103–448 significantly decreased the number of requirements to be included in each State's management and administration plan. Section 703 of Public Law 104–193 prohibits requiring the annual submission of a free and reduced price policy statement after the initial submission, unless there is a substantive change. Section 102(d) of Public Law 105–336 amended section 9 of the National School Lunch Act to require State agencies to use a single State/local agreement for all programs operated by the same school food authority under the administration of the State agency. The Section also requires State agencies to use a common reimbursement form to claim meals served under the programs. The affected SFSP requirements and their applicable burden changes are listed in the table below:

ESTIMATED ANNUAL REPORTING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agencies (SAs), by Feb 15 of each year, submit to FNSRO a program Management and Administration Plan for that fiscal year:					
Total Existing	7 CFR 225.4 (a)	50 SAs	1	80	4,000
Total Proposed	7 CFR 225.4 (a)	50 SAs	1	40	2,000
Sponsor must submit a statement of its policy for serving free meals:					
Total Existing	7 CFR 225.6(c)(3)	3,616 sponsors	1	1	3,616
Total Proposed	7 CFR 225.6(c)(3)	0	0	0	0
Sponsors approved for participation in SFSP enter into written agreements with SAs to operate program in accordance with regulatory requirements (FNS–80):					
Total Existing	7 CFR 225.6 (e)	3,616 sponsors	1	.123	445
Total Proposed	7 CFR 225.6 (e)	3,000 sponsors	1	.123	369
SAs forward the final claim form for reimbursement:					
Total Existing	7 CFR 225.9(b) (5)	50 SAs	3	1	150
Total Proposed	7 CFR 225.9(b) (5)	40 SAs	3	1	120
Total Existing Burden for 7 CFR Part 225.					301,404
Total Proposed Burden for 7 CFR Part 225.					295,682
Difference					−5,722

Good Cause Determination

This interim rule is being issued without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(a) and (b). On December 8, 1994, and September 26, 1995, guidance memoranda were issued to State agencies on implementing SFSP provisions of the Healthy Meals for Healthy Americans Act of 1994, Pub. L. 103–448. To aid the State agencies in implementing the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, guidance memoranda were issued on August 13, 1996, January 27, 1997, and May 19, 1997. Finally, on December 3, 1998, a guidance memorandum was issued for use by State agencies in implementing SFSP provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998, Pub. L. 105–336. In each instance, the guidance memoranda were implementing statutory provisions that made nondiscretionary changes to the SFSP. Based upon this determination, the Administrator of FNS finds good cause to adopt this rule on an interim basis without prior public comment because such comment is unnecessary. In developing final rulemaking, however, the Administrator believes a

solicitation of public comment would be beneficial given that States and local entities have acquired substantial operational experience to date. As stated earlier in this preamble, comments received within 180 days of publication will be considered.

List of Subjects in 7 CFR Part 225

Food and Nutrition Service, Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 225 is amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13, and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. In § 225.2:

a. Remove the definitions of *Academic-Year NYSP*, *AFDC assistance unit,* and *Homeless feeding site*;

b. Revise the definitions of *Current income*, *Documentation*, *NYSP feeding site*, *Private nonprofit organization*, and *Sponsor*; and

c. Add in alphabetical order the new definitions of *FDPIR household* and *TANF*.

The additions and revisions read as follows:

§ 225.2 Definitions.

* * * * *

Current income means income, as defined in § 225.15(f)(4)(vi), received during the month prior to application for free meals. If such income does not accurately reflect the household's annual income, income must be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

* * * * *

Documentation means:

(a) The completion of the following information on a free meal application:

(1) Names of all household members;

(2) Income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) The signature of an adult household member; and

(4) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; or

(b) For a child who is a member of a household receiving food stamp, FDPIR, or TANF benefits, ''documentation'' means completion of only the following information on a free meal application:

(1) The name(s) and appropriate food stamp, FDPIR, or TANF case number(s) for the child(ren); and

(2) the signature of an adult member of the household.

* * * * *

FDPIR household means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Distribution Program on Indian Reservations.

* * * * *

NYSP feeding site means a site at which all of the children receiving Program meals are enrolled in the NYSP and which qualifies for Program participation on the basis of documentation that the site meets the definition of ''areas in which poor economic conditions exist'' as provided in this section.

* * * * *

Private nonprofit organization means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) which meets the definition of ''private nonprofit'' in this section and which:

(a) Administers the Program:

(1) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site; or

(2) With a waiver granted by the State in accordance with § 225.6(b)(ii), not more than 500 children being served at any approved meal service at any one site;

(b) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(c) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(d) Provides ongoing year-round activities for children or families;

(e) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(f) Meets applicable State and local health, safety, and sanitation standards.

* * * * *

Sponsor means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are referred to in the Act as ''service institutions''.

* * * * *

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

* * * * *

3. In § 225.3, amend paragraph (b) by removing the third sentence and by revising the second sentence to read as follows:

§ 225.3 Administration.

* * * * *

(b) * * * Each State agency must notify the Department by November 1 of the fiscal year regarding its intention to administer the Program.* * *

* * * * *

4. In § 225.4, revise paragraph (d) to read as follows:

§ 225.4 Program management and administration plan.

* * * * *

(d) The Plan must include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plan to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plan for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children;

(3) The State's plans for providing technical assistance and training to eligible sponsors;

(4) The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(5) The State's plan for timely and effective action against Program violators;

(6) The State's plan for ensuring the fiscal integrity of sponsors not subject to auditing requirements prescribed by the Secretary;

(7) The State's plan for ensuring compliance with the food service managment company procurement monitoring requirements set forth at § 225.6(h); and

(8) An estimate of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests.

5. In § 225.6:

a. Revise the last sentence in paragraph (a)(2);

b. Remove paragraph (a)(3) and redesignate paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4), respectively;

c. Revise newly redesignated paragraph (a)(4);

d. Revise paragraph (b)(1), (b)(5), and (b)(6);

e. Amend paragraph (c)(2)(ii) introductory text by removing the words ''or a homeless feeding site'';

f. Revise paragraph (c)(2)(iv) and (c)(2)(v), paragraph (c)(3) introductory text, paragraph (c)(3)(i), paragraph (c)(3)(ii) introductory text, and paragraph (c)(3)(ii)(B);

g. Remove the words ''or a homeless feeding site,'' from paragraph (d)(1)(i);

h. Revise paragraph (e) introductory text and paragraphs (e)(1) and (e)(2);

i. Redesignate paragraphs (e)(3) through (e)(15) as paragraphs (e)(4) through (e)(16), and add a new paragraph (e)(3);

j. Revise paragraph (g); and

k. Revise paragraph (h)(2)(v).

The revisions and addition read as follows:

§ 225.6 State agency responsibilities.

(a) * * *

(2) * * * State agencies shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas.

* * * * *

(4) In addition to the warnings specified in paragraph (a)(3) of this section, State agencies may include the following information on applications and pre-application materials distributed to prospective sponsors:

(i) The criminal penalties and provisions established in section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)) that states substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(ii) The procedures for termination from Program participation of any site or sponsor which is determined to be seriously deficient in its administration of the Program. In addition, the application may also state that appeals of sponsor or site terminations will follow procedures mandated by the State agency and will also meet the minimum requirements of 7 CFR 225.13.

(b) *Approval of sponsor applications.* (1) Each State agency must inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency must require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline for the Program application submission.

* * * * *

(5) The State agency must use the following priority system in approving applicants to operate sites that propose to serve the same area or the same enrolled children:

(i) Public or nonprofit private school food authorities;

(ii) Public agencies and private nonprofit organizations that have demonstrated successful program performance in a prior year;

(iii) New public agencies; and

(iv) New private nonprofit organizations.

(v) If two or more sponsors that qualify under paragraph (b)(5)(ii) of this section apply to serve the same area, the State agency must determine on a case-by-case basis which sponsor or sponsors it will select to serve the needy children in the area. The State agency should consider the resources and capabilities of each applicant.

(6) The following limitations apply on the number of sites and children that may be served per day:

(i) The State agency must not approve any school food authority or public agency to operate more than 200 sites or to serve more than an average of 50,000 children per day. However, the State agency may approve exceptions if the applicant can demonstrate that it has the capability of managing a program larger than these limits.

(ii) The State agency must not approve any private nonprofit organization to operate more than 25 sites. In addition, the State agency must not approve any private nonprofit organization to serve more than 300 children at any one site for any approved meal service. However, the State agency may grant a waiver to allow up to 500 children served at any one site operated by a private nonprofit organization. To be approved for the waiver, the private nonprofit organization must demonstrate that it is fully capable of managing a site with more than 300 children and that there are no other sponsors capable of serving the children in excess of 300.

* * * * *

(c) * * *

(2) * * *

(iv) For sites that serve homeless children, information sufficient to demonstrate that the sites are not residential child care institutions, as defined in paragraph (c) of the definition of *School* in § 210.2 of this chapter. If cash payments, food stamps, or any in-kind service are required of any meal recipient at these sites, sponsors must describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children. In addition, sponsors must certify that these sites employ meal counting methods to ensure that reimbursement is claimed only for meals served to children.

(v) For NYSP sites, certification from the sponsor that all the children who will receive Program meals are enrolled participants in the NYSP.

* * * * *

(3) Each applicant must submit a statement of nondiscrimination in its policy of serving meals to children. The statement must consist of an assurance that all children are served the same meals and that there is no discrimination in the course of the food service. A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced price policy, a revised policy statement must be provided at the State agency's request.

(i) In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants except camps must include a statement that the meals served are free at all sites.

(ii) In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants that are camps that charge separately for meals must include the following:

* * * * *

(B) A description of the method or methods to be used in accepting applications from families for Program meals. Such methods must ensure that households are permitted to apply on behalf of children who are members of households receiving food stamp, FDPIR, or TANF benefits using the categorical eligibility procedures described in § 225.15(f).

* * * * *

(e) *State-Sponsor Agreement.* A sponsor approved for participation in the Program must enter into a written agreement with the State agency. If the sponsor is a school food authority that operates more than one child nutrition program (e.g., the National School Lunch Program, the School Breakfast Program, or the Child and Adult Care Food Program) under a single State agency, a single permanent agreement that includes all the child nutrition programs must be executed with the State agency, as described in § 210.9(b) of this chapter. All sponsors must agree in writing to:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation; or, at any time of the year, in the case of sponsors administering the Program under a continuous school calendar system;

(2) For school food authorities, offer meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and offer the same meals to all children;

(3) For all other sponsors, serve meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and serve the same meals to all children;

* * * * *

(g) Food service management company registration. A State agency may require each food service management company, operating within the State, to register based on State procedures. A State agency may further require the food service management company to certify that the information submitted on its application for registration is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(h) * * *

(2) * * *

(v) The food service management company must have State or local health certification for the facility in which it proposes to prepare meals for use in the Program. It must ensure that health and sanitation requirements are met at all times. In addition, the food service management company must ensure that meals are inspected periodically to determine bacteria levels present in the meals and that the bacteria levels found to be present in the meals conform with the standards set by local health authorities. The results of the inspections must be submitted promptly to the sponsor and to the State agency.

* * * * *

6. In § 225.7:

a. Remove the last sentence in paragraph (a);

b. Amend paragraph (d)(2) introductory text by adding a sentence before the last sentence;

c. Remove paragraph (d)(2)(ii); and

d. Redesignate paragraph (d)(2)(iii) as paragraph (d)(2)(ii).

The addition reads as follows:

§ 225.7 Program monitoring and assistance.

* * * * *

(d) * * *

(2) *Sponsor and site reviews.* * * * When the same school food authority personnel administer this Program as well as the National School Lunch Program (part 210 of this chapter), the State agency is not required to conduct a review of the Program in the same year in which the National School Lunch Program operations have been reviewed and determined to be satisfactory. * * *

* * * * *

§ 225.8 [Amended]

7. In § 225.8, remove paragraphs (d) and (e).

8. In § 225.9:

a. Amend paragraph (c)(1)(i) by removing the second sentence and adding in its place two new sentences;

b. Remove paragraph (d)(10);

c. Redesignate paragraphs (d)(1) through (d)(9) as paragraphs (d)(2) through (d)(10);

d. Add a new paragraph (d)(1);

e. Revise newly redesignated paragraphs (d)(7), (d)(8) and (d)(9); and

f. Amend the second sentence in paragraph (f) by removing the words ''paragraph (d)(4)'' and adding in their place ''paragraph (d)(5)''.

The revisions read as follows:

§ 225.9 Program assistance to sponsors.

* * * * *

(c) * * *

(1) *Operating costs.* (i) * * * Except for school food authorities, sponsors must conduct training sessions before receiving the second advance payment. Training sessions must cover Program duties and responsibilities for the sponsor's staff and for site personnel.* * *

* * * * *

(d) * * *

(1) School food authorities that operate the Program, and operate more than one child nutrition program under a single State agency, must use a common claim form (as provided by the State agency) for claiming reimbursement for meals served under those programs.

* * * * *

(7) Payments to a sponsor for operating costs must equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor; or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current rates for each meal type, as adjusted in accordance with paragraph (d)(9) of this section.

(8) Payments to a sponsor for administrative costs must equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current administrative rates for each meal type, as adjusted in accordance with paragraph (d)(9) of this section. Sponsors must be eligible to receive additional administrative reimbursement for each meal served to participating children at rural or self-preparation sites, and the rates for such additional administrative reimbursement must be adjusted in accordance with paragraph (d)(9) of this section.

(9) On each January 1, or as soon thereafter or as practicable, FNS will publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraphs (d)(7)(ii) and (d)(8)(iii) of this section. Adjustments will be based

upon changes in the series for food away from home of the Consumer Price Index(CPI) for all urban consumers since the establishment of the rates. Higher rates will be established for Alaska and Hawaii, based on the CPI for those States.

* * * * *

§ 225.13 [Amended]

9. In § 225.13, amend the first sentence of paragraph (a) by adding the words ‘‘, if applicable’’ after the word ‘‘registration’’ wherever it appears.

10. In § 225.14:

a. Amend paragraphs (c)(3) and (d)(1) by removing the words ‘‘or a homeless feeding site’’;

b. Redesignate paragraphs (d)(6) through (d)(7) as paragraphs (d)(5) through (d)(6), respectively; and revise them to read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(d) * * *

(5) If the sponsor administers NYSP sites, it must ensure that all children at such sites are enrolled participants in the NYSP.

(6) If the sponsor is a private nonprofit organization, it must certify that it:

(i) Administers the Program:

(A) At no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site or,

(B) With a waiver granted by the State agency in accordance with § 225.6(b)(ii), not more than 500 children being served at any approved meal service at any one site;

(ii) Operates in areas where a school food authority has not indicated that it will operate the Program in the current year;

(iii) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(iv) Provides ongoing year-round activities for children or families;

(v) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(vi) Meets applicable State and local health, safety, and sanitation standards.

11. In § 225.15:

a. Amend paragraph (a)(2) by removing the second sentence and by adding in its place two new sentences;

b. Amend the last sentence of paragraph (e) by removing the words ‘‘food stamp households or AFDC assistance units’’ and adding in their place ‘‘households receiving food stamp, FDPIR, or TANF benefits’’;

c. Revise paragraph (f);

d. Remove paragraph (g)(2) and redesignate paragraphs (g)(3) through (g)(8) as paragraphs (g)(2) through (g)(7), respectively;

e. Amend newly redesignated paragraph (g)(2) by removing the words ‘‘except a private nonprofit organization’’ in the first sentence;

f. Remove newly redesignated paragraph (g)(4)(x) and redesignate newly redesignated paragraphs (g)(4)(xi) through (g)(4)(xiii) as paragraphs (g)(4)(x) through (g)(4)(xii), respectively.

The revisions and addition read as follows:

§ 225.15 Management responsibilities of sponsors.

(a) * * *

(2) * * * In addition, the sponsor must ensure that records of any site serving homeless children accurately reflect commodity allotments received as a ‘‘charitable institution’’, as defined in §§ 250.3 and 250.41 of this chapter. Commodities received for Program meals must be based only on the number of eligible children’s meals served. * * *

* * * * *

(f) *Application for free Program meals.*—(1) *Purpose of application form.* The application is used to determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of ‘‘areas in which poor economic conditions exist’’, in § 225.2. In these situations, parents or guardians of children enrolled in camps or these other sites must be given application forms to provide information described in paragraph (f)(2) or (f)(3) of this section, as applicable. Applications are not necessary if other information sources are available and can be used to determine eligibility of individual children in camps or sites.

(2) *Application procedures based on household income.* The household member completing the application on behalf of the child enrolled in the Program must provide the following information:

(i) The names of all children for whom application is made;

(ii) The names of all other household members;

(iii) The social security number of the adult household member who signs the application or an indication that the household member does not have a social security number;

(iv) The income received by each household member identified by source of income;

(v) The signature of an adult household member;

(vi) The date the application is completed and signed.

(3) *Application based on the household’s receipt of food stamp, FDPIR, or TANF benefits.* Households may apply on the basis of receipt of food stamp, FDPIR, or TANF benefits by providing the following information:

(i) The name(s) and food stamp, FDPIR, or TANF case number(s) of the child(ren) who are enrolled in the Program; and

(ii) The signature of an adult household member.

(4) *Information or notices required on application forms.* Application forms or descriptive materials given to households about applying for free meals must contain the following information:

(i) The family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals (Note: The income levels for free school meal eligibility must not be included on the application or in other materials given to the household).

(ii) A statement that a child who is a member of a household that receives food stamp, FDPIR, or TANF benefits is automatically eligible to receive free meals in the Program;

(iii) A statement that reads, ‘‘In certain cases, foster children are eligible for free meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us.’’;

(iv) The following statement that provides notice to the household member whose social security number is disclosed: ‘‘We are required by the National School Lunch Act in section 9 to ask for a social security number. Unless a food stamp, FDPIR, or TANF case number is provided for your child, the application cannot be approved without either the social security number of the person who signs the application or an indication that he or she does not have a social security number. The social security number provided may be used to identify the person in checking the correctness of the information provided on the application. This may occur during reviews, audits or investigations of the Program, and it may involve contacting employers to determine income. It also may involve contacting the food stamp or welfare office to determine if your household is receiving benefits. It may be necessary to check with the State employment security office to determine the amount of benefits your household

is receiving. Other income information provided by you may be checked. If the information you provide is incorrect, your household may lose benefits and/or claims or legal action may be taken against your household.''

(v) The statement used to inform the household about the use of social security numbers must comply with the Privacy Act of 1974 (Pub. L. 93–579). If a State or local agency plans to use the social security numbers for uses not described in paragraph (f)(4)(iv) of this section, the notice must be revised to explain those uses.

(vi) Examples of income that should be provided on the application, including: Earnings, wages, welfare benefits, pensions, support payments, unemployment compensation, social security, and other cash income;

(vii) A notice placed immediately below the signature block stating that the person signing the application certifies that all information provided is correct, that the household is applying for Federal benefits in the form of free Program meals, that Program officials may verify the information on the application, and that purposely providing untrue or misleading statements may result in prosecution under State or Federal criminal laws; and

(viii) A statement that if food stamp, FDPIR, or TANF case numbers are provided, they may be used to verify the current food stamp, FDPIR, or TANF certification for the children for whom free meals benefits are claimed.

(5) *Verifying information on Program applications.* Households selected to verify information on their Program applications must be notified in writing. State agencies must ensure that the notice of information about the use of social security numbers provided on applications complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). Households must be informed of the following:

(i) They must provide a social security number for each adult household member, or indicate that an adult household member does not have a social security number, or provide proof that they are receiving food stamp, FDPIR, or TANF benefits;

(ii) They will lose Program benefits or be terminated from participation if they do not cooperate with the verification process;

(iii) Social security numbers may be used to determine the correctness of information on applications and continued eligibility for Program benefits;

(iv) They will be given the name and phone number of an official who can assist in the verification process;

(v) Verification may occur during program reviews, audits, and investigations;

(vi) Verification may include contacting employers, food stamp or welfare offices, or State employment offices to determine the accuracy of statements on the application about income, receipt of food stamp, FDPIR, TANF, or unemployment benefits; and

(vii) They may lose benefits or face claims or legal action if incorrect information is reported on the application.

* * * * *

12. In § 225.16:

a. Revise paragraph (b) introductory text and paragraph (b)(1)(i);

b. Remove paragraph (b)(2) and redesignate paragraphs (b)(3), (b)(4), and (b)(5) as paragraphs (b)(2), (b)(3), and (b)(4), respectively;

c. Revise newly redesignated paragraphs (b)(2), (b)(3), and the first sentence of (b)(4);

d. Revise the first sentence in paragraph (c)(1);

e. Amend the introductory text of paragraph (d) by adding a sentence at the end;

f. Revise paragraph (d)(1) introductory text;

g. Revise the entry for ''Eggs'' in the table under Meat and Meat Alternates (Optional) in paragraph (d)(1);

h. Revise paragraph (d)(2) introductory text;

i. Revise the centered heading and the introductory text of paragraph (d)(3);

j. Revise the entry for ''Eggs'' in the table under Meat and Meat Alternates in paragraph (d)(3);

k. Remove paragraph (e) and redesignate paragraphs (f) and (g) as paragraphs (e) and (f), respectively; and

l. Revise newly redesignated paragraph (f)(1).

The revisions and addition read as follows:

§ 225.16 Meal service requirements.

* * * * *

(b) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplements, referred to from this point as ''snacks''. No sponsor may be approved to provide more than two snacks per day. A sponsor may only be reimbursed for meals served in accordance with this section.

(1) * * *

(i) Each day a camp may serve up to three meals or two meals and one snack;

* * * * *

(2) *NYSP Sites.* Sponsors of NYSP sites shall only be reimbursed for meals served to enrolled NYSP participants at these sites.

(3) *Restrictions on the number and type of meals served.* Food service sites other than camps and sites that primarily serve migrant children may serve either:

(i) One meal each day, a breakfast, a lunch, or snack; or

(ii) Two meals each day, if one is a lunch and the other is a breakfast or a snack.

(4) *Sites which serve children of migrant families.* Food service sites that primarily serve children from migrant families may be approved to serve each day up to three meals or two meals and one snack. * * *

(c) *Time restrictions for meal service.* (1) Three hours must elapse between the beginning of one meal service, including snacks, and the beginning of another, except that 4 hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. * * *

* * * * *

(d) * * * Children age 12 and up may be served larger portions based on the greater food needs of older boys and girls.

(1) The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
* * * * *	
Meat and Meat Alternates (Optional)	
* * * * *	
Eggs	½ large egg.
* * * * *	

* * * * *

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

* * * * *

Snacks

(3) The minimum amounts of food components to be served as snacks are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
* * * * *	
Eggs	½ large egg.
* * * * *	

* * * * *

(f) *Exceptions to and variations from the meal pattern.*—(1) *Meals provided by school food authorities.*—(i) *Meal pattern substitution.* School food authorities that are Program sponsors and that participate in the National School Lunch or School Breakfast Program during any time of the year may substitute the meal pattern requirements of the regulations governing those programs (Parts 210 and 220 of this chapter, respectively) for the meal pattern requirements in this section.

(ii) *Offer versus serve.* School food authorities that are Program sponsors may permit a child to refuse one or more items that the child does not intend to eat. The school food authority must apply this ''offer versus serve'' option under the rules followed for the National School Lunch Program, as described in part 210 of this chapter. The reimbursements to school food authorities for Program meals served under the ''offer versus serve'' must not be reduced because children choose not to take all components of the meals that are offered.

* * * * *

§ 225.18 [Amended]

13. In § 225.18, remove paragraph (i).

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33503 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1721

Post-Loan Policies and Procedures for Insured Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: As a part of its ongoing program to streamline regulations, the Rural Utilities Service (RUS) is amending its regulation on the advance of funds to reflect an increase in the threshold limit from $25,000 to $100,000 for which plant investments may be made in the borrowers' systems and be eligible for insured loan fund financing without being included in an RUS-approved construction work plan (CWP). In addition, RUS has determined to no longer limit borrowers to 130 percent of the project cost estimate for projects in the CWP or amendment and approved loan, as amended, for which prior RUS approval must be obtained. These changes will have the effect of reducing the number of actions by borrowers that would otherwise require RUS approval and will reduce administrative costs to borrowers and to the agency.

DATES: This rule will become effective February 11, 2000 unless we receive written adverse comments or notice of intent to submit adverse comments on or before January 27, 2000. If we receive such comments or notice, we will publish a timely withdrawal of the Direct Final Rule in the **Federal Register** stating that the rule will not become effective until we have addressed the comments received and published a final rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Charles M. Philpott, Chief, Engineering Branch, Northern Regional Division, U.S. Department of Agriculture , Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Ave., SW., Washington, DC 20250–1522. Telephone: (202) 720–1432. E-mail: cphilpot@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule relating to RUS' electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining federal financing, received economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The Office of Management and Budget has approved the reporting and recordkeeping requirements contained in 7 CFR part 1721 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned control number 0572–0032. This rule contains no additional information collection or recordkeeping requirements.

National Environmental Policy Act Certification

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

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State local, and tribal governments or the private sector. A final rule related notice entitled, ''Department Programs and Activities Excluded from Executive

Order 12372,'' (50 FR 47034) determined that RUS loans and loan guarantees were not covered by Executive Order 12372.

Unfunded Mandates

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

Background

RUS is amending its regulations to change the definition of a minor project from the current threshold level of $25,000 or less, to a project costing $100,000 or less. Section 1721.1 restricts borrowers to advances of insured loan funds for projects, except for minor projects, that are included in an RUS approved borrower's construction work plan (CWP) or CWP amendment. A minor project is defined as a project costing $25,000 or less. A minor project is eligible for insured loan funding without being included in an RUS-approved CWP or amendment. In RUS' review of the impact of this rule on borrowers, we have determined that the $25,000 limit for a minor project is creating unneeded paperwork and cost burdens on borrowers requiring unnecessary CWP amendments to be approved by RUS, without producing significant benefits. The increase to $100,000 for a minor project will allow borrowers greater flexibility in their construction programs and reduce the number of CWP amendments requiring RUS approval. The level of $100,000 is considered reasonable and adequate for purposes of monitoring borrowers' construction programs and will provide sufficient safeguards to assure that RUS loan funds are being used for intended loan purposes.

RUS is further amending its regulations to eliminate the requirement that funding requests from borrowers not exceed 130 percent of the project cost estimate, previously approved by RUS in the borrowers' CWP or CWP amendment and in an approved loan.

Under § 1721.1, the ''130 percent rule'' applies to each major project included in the borrower's CWP and RUS approved loan. In RUS' review of compliance with this rule, we have determined that the majority of cases of noncompliance occur when borrowers exceed 130 percent of the cost estimate for projects coded in the 100 and 600 series. These project codes relate to the construction of distribution line extensions and the installation of miscellaneous line equipment required to provide electric service to new customers. Since a borrower cannot accurately predict the number of new customers, significant cost variations can and do occur in these projects from the time the cost estimates were originally prepared in the CWP. In view of this, RUS is amending the rule to remove the 130 percent limitation for the projects coded 100 and 600.

Further, in reviewing the 130 percent rule as applied to the remaining major project codes in the CWP and approved loan, most borrowers are either providing good cost estimates for the projects in the CWP and loan or are amending the CWP, as needed, based on factors other than an increase in cost. Therefore, RUS is amending the regulation to eliminate the ''130 percent rule'' in its entirety for all major projects included in the borrowers' CWPs and RUS-approved insured loans.

RUS believes that the changes under this rule will reduce administrative costs to borrowers and to the Government and will relax the RUS requirements under which borrowers may qualify for RUS insured fund financing.

List of Subjects in 7 CFR Part 1721

Electric power, Loan programs—energy, Rural areas.

For the reasons set forth in the preamble, RUS amend 7 CFR chapter XVII as follows:

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

1. The authority citation for part 1721 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; and 6941 *et seq.*

2. Section 1721.1 is revised to read as follows:

§ 1721.1 Advances.

(a) *Purpose and amount.* With the exception of minor projects, insured loan funds will be advanced only for projects which are included in an RUS approved borrower's construction work plan (CWP) or approved amendment and in an approved loan, as amended. Loan fund advances can be requested in an amount representing actual costs incurred.

(b) *Minor project.* Minor project means a project costing $100,000 or less. Such a project qualifies for advance of loan funds even though it may not have been included in an RUS-approved borrower's CWP, amendment to such CWP, or approved loan. Total advances requested shall not exceed the total loan amount. All projects for which loan fund advances are requested must be constructed to achieve purposes permitted by terms of the loan contract between the borrower and RUS.

(c) *Certification.* Pursuant to the applicable provisions of the RUS loan contract, borrowers shall certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and shall also provide for those that cost in excess of $100,000, a contract or work order number as applicable and a CWP cross-reference project coded identification number. For a minor project not included in an RUS approved borrower's CWP, the Borrower shall describe the project and do one of the following to satisfy RUS' environmental requirements (see 7 CFR part 1794).

(1) If applicable, state that the project is a categorical exclusion of a type described in § 1794.21(b), which normally does not require preparation of an Environmental Report (ER); or

(2) If applicable, state that the project is a categorical exclusion of a type that normally requires an ER and then:

(i) Submit the ER with the request for funds to be approved for advance, or

(ii) If applicable, certify that it has analyzed the minor project with respect to a comprehensive service area environmental map and data base collected and used in preparing the ER for its RUS-approved borrower's CWP, and that on the basis of that information, the minor project will not be located in an environmentally sensitive area or location.

(d) *Noncompliance.* Where insured loan funds are found to have been advanced in noncompliance with this section, borrowers will be required to deposit the appropriate amount of the over-advance in the construction fund-trustee account and pay any accrued and unpaid interest to RUS. The Administrator will require borrowers, in order to remedy such noncompliance, to pay an additional amount equal to the interest on the funds over-advanced for the period such funds were outstanding, calculated at a rate equal to the difference between the RUS loan interest rate and the most recent rate at which RUS sold Certificates of Beneficial Ownership (CBO's). While RUS will generally permit the amount of over-advance deposited in the construction fund-trustee account to be subsequently used by the borrower for RUS approved projects, nothing in this section shall be construed to preclude RUS from exercising any rights or

remedies which RUS may have pursuant to the loan contract.

Dated: December 21, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–33639 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 99–050IF]

RIN 0583–AC65

Food Labeling; Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending until January 1, 2003, the effective date of the requirements that, to bear the claim ''healthy'' or any other derivative of the term ''health,'' individual meat and poultry products can contain no more than 360 milligrams (mg) sodium, and that meal-type products can contain no more than 480 mg sodium.

DATES: *Effective date:* December 28, 1999.

Comment date: Written comments should be received by January 27, 2000.

ADDRESSES: Submit one original and two copies of written comments to the FSIS Docket Clerk, Docket #99–050IF, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. All comments will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William J. Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation; telephone (202) 205–0495 or FAX (202) 401–1760.

SUPPLEMENTARY INFORMATION:

Background

In the May 10, 1994 **Federal Register** (59 FR 24220), FSIS published a final rule to establish a definition of the term ''healthy'' or any other derivative of the term ''health'' and similar terms on meat and poultry product labeling. The final rule provided a definition for the implied nutrient content claim ''healthy'' for individual meat and poultry products and for meal-type products. The rule defined two separate timeframes in which different criteria for sodium content would be effective. According to the regulations, the first timeframe would last through the first 24 months of implementation (i.e., through November 10, 1997), and the second would begin after the first 24 months of implementation (after November 10, 1997).

Before November 10, 1997, under §§ 317.363(b)(3) and 381.463(b)(3), for an individual meat or poultry product to qualify to bear the term ''healthy'' or a derivative of the term ''health'' on the labeling, the product could contain no more than 480 mg of sodium (first-tier sodium level): (1) Per reference amount customarily consumed (RACC) per eating occasion; (2) Per labeled serving size; and (3) Per 50 grams (g) for products with small RACC's (i.e., 30 g or less or 2 tablespoons or less). With regard to the last provision, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount of all nutrients, the per-50-gram criterion refers to the prepared form. After November 10, 1997, to qualify to bear this term, the product could contain no more than 360 mg of sodium (second-tier sodium level) per RACC, per labeled serving size, and per 50 g for products with small RACC's. Under 317.363(b)(3)(i) and 381.463(b)(3)(i), a meal-type product could contain no more than 600 mg of sodium per labeled serving size before November 10, 1997, and no more than 480 mg of sodium per labeled serving size after November 10, 1997.

Also in the **Federal Register** of May 10, 1994 (59 FR 24232), the Food and Drug Administration (FDA) published a final rule to define the term ''healthy'' under section 403(r) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 343(r)). FDA's rule also defined two separate timeframes in which different criteria for sodium content associated with the use of the ''healthy'' claim would be effective. FDA's rule established the same sodium levels that the FSIS rule established for two separate timeframes; however, the timeframes in FDA's rule were different (i.e., before January 1, 1998, and after January 1, 1998).

On December 7, 1996, FSIS received a petition from ConAgra, Inc., requesting that §§ 317.363(b)(3) and 381.463(b)(3) be amended to ''eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second tier levels of 360 mg sodium requirements for individual foods and 480 mg sodium for meal-type products.'' As an alternative, the petitioner requested that the effective date of November 10, 1997 be delayed until food technology can develop acceptable products with reduced sodium content, and until there is a better understanding of the relationship between sodium and hypertension.

In response to the petition, FSIS issued an interim final rule on February 13, 1998, (63 FR 7279) to amend §§ 317.363(b)(3) and 381.463(b)(3) to extend the effective date for the lower sodium standards associated with the term ''healthy'' until January 1, 2000. The extension of the effective date was intended: (1) To allow time for FSIS to reevaluate the standard, including the data contained in the petition and any additional data that the Agency might receive; (2) to conduct any necessary rulemaking; and (3) to allow time for industry to respond to the rule or to any change in the rule that may result from the Agency's reevaluation.

FDA also received a petition from ConAgra, Inc., requesting that the lower sodium standards associated with use of the term ''healthy'' be removed from the regulations. In the **Federal Register** of April 1, 1997 (62 FR 15390), FDA announced a stay until January 1, 2000, of the provisions relating to the lower sodium standards.

In its February 13, 1998, interim final rule, FSIS asked for data concerning the technological feasibility of reducing the sodium content of individual foods to 360 mg per RACC and of meal-type dishes to 480 mg sodium per labeled serving and for additional information or views on consumer acceptance of meat and poultry foods with such sodium levels. With regard to technological feasibility, the Agency asked for information about the availability or lack of availability of acceptable sodium substitutes, the difficulties in manufacturing different lines of meat and poultry products with lowered sodium levels, and the impact of these sodium levels on the shelf-life stability and the safety of the food. The Agency also asked for comments on other approaches to reduce the amount of sodium in meat and poultry products labeled ''healthy.''

FSIS received 20 responses to the interim final rule. The comments responding to the rule presented strong and opposing views on whether FSIS should let the second-tier sodium levels take effect. They also contained a significant amount of data relating to use of the term ''healthy.''

FSIS has reviewed the comments and has also made an independent assessment of the number of foods labeled as ''healthy.'' Based on the information available, the Agency tentatively concludes that, in some cases, the second-tier sodium levels may

be overly restrictive, thereby eliminating a term that may potentially assist consumers in maintaining a healthy diet. The Agency has been unable to complete its reevaluation of the definition of the term ''healthy'' or to consider fully options that preserve the public health intent while permitting manufacturers to use this term on foods that are consistent with dietary guidelines.

FSIS has not completed its reevaluation of sodium levels associated with the term ''healthy'' in the time allowed by the February 13, 1998, interim final rule because of: (1) Other Agency priorities; and (2) the need to investigate independently the validity of the strong opposing positions expressed in the comments. Because FSIS needs additional time to consider whether to propose a change in the definition, the Agency is extending the effective date until January 1, 2003.

FSIS also recognizes, as mentioned in the petition, that manufacturers must begin very soon to revise the formulations and labeling, if they have not already done so, for those products that do not comply with the requirement that must be met after January 1, 2000, to bear the claim ''healthy.'' FSIS needs time to consider the supporting and opposing positions and to conduct any necessary rulemaking on the issues raised.

Given these factors, the Agency is persuaded that it is in the public interest to extend the effective date of the provisions for the lower standards for sodium in the definition of ''healthy.'' This action is being taken to: (1) Allow FSIS time to reevaluate the information that supports and opposes the petition, (2) conduct any necessary rulemaking to revise the sodium limits for the term ''healthy,'' and (3) provide time for companies to respond to any changes that may result from Agency rulemaking.

In the **Federal Register** of March 16, 1999, FDA published a final rule that extended the stay of the provisions relating to the lower sodium levels associated with the term ''healthy'' until January 1, 2003 (64 FR 12886). FDA's reasons for extending the stay of these provisions were largely the same as those that FSIS set out above.

Interested persons may submit comments regarding the appropriateness of the basis for this extension of the effective date of the lower sodium standards in the definition of the term ''healthy.'' FSIS encourages manufacturers who can meet the lower sodium levels for particular foods and still produce an acceptable product to do so even as the Agency reevaluates the issues discussed.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This interim final rule is not intended to have retroactive effect.

If this interim final rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Executive Order 12866 and the Regulatory Flexibility Act

This interim final rule has been determined to be non-significant and was not reviewed by OMB under Executive Order 12866.

The Administrator has made an initial determination that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This interim final rule will impose no new requirements on small entities.

FSIS needs additional time to evaluate the impact of further reducing limits on sodium contents of foods labeled as ''healthy'' to determine if the costs of such an action exceed the benefits. The petitioner requesting the extension has presented data to support that lowering the sodium content on foods labeled as ''healthy'' could result in fewer ''healthy'' foods being consumed or consumers adding table salt to improve the products' palatability. In addition, the petitioner suggested that lack of available substitutes for sodium would impair the industry's ability to continue manufacturing ''healthy'' foods as currently defined. If these impacts were to occur, the rule would not have the intended effect of improving diets. Some commenters to the previous FSIS interim final rule agreed with the petitioner. In addition to these comments, other commenters provided arguments supporting the implementation of the lower sodium limits. Based on comments received, FSIS believes that further benefits could be achieved by lowering the sodium content of foods labeled as ''healthy. However, FSIS has also determined that it is in the public interest to extend the effective date for the lower sodium standards in the definition of ''healthy'' to provide the Agency additional time to determine if the more restrictive limits would have a negative effect. Unless the effective date is changed, meat and poultry products labeled as ''healthy'' would have to meet the more restrictive sodium standards on January 1, 2000, which could possibly deprive consumers of these products.

Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629; February 16, 1994), ''Federal Actions to Address Environmental Justice in Minority and Low-Income Populations,'' FSIS has considered potential impacts of this interim final rule on environmental and health conditions in low-income and minority communities.

The interim final regulations would not require or compel meat and poultry product establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low-income and minority communities. Further, this interim final rule would not exclude any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this interim final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which

is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedures Act, 5 U.S.C 553, it is the practice of the Administrator to offer interested parties the opportunity to comment on proposed regulations. However, the extended effective date in this interim final rule does not establish any new rules. In addition, this interim final rule must be published in the **Federal Register** prior to January 1, 2000, because that is the current effective date in the regulations. Therefore, the Administrator has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Administrator waives the 30-day delayed effective date under 5 U.S.C. 553(d).

Paperwork Requirements

There is no paperwork associated with this action.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection, Nutrition.

9 CFR Part 381

Food labeling, Nutrition, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is amending parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority for part 317 continues to read as follows:

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

§ 317.363 [Amended]

2. Section 317.363 is amended by removing the phrase ''through January 1, 2000'' in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with ''through January 1, 2003''.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.463 [Amended]

4. Section 381.463 is amended by removing the phrase ''through January 1, 2000'' in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with ''through January 1, 2003''.

Done at Washington, DC, on: December 21, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–33530 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 99–045F]

Fee Increase for Meat and Poultry Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees that FSIS charges meat and poultry establishments, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These fee increases reflect the increased cost of inspection, the national and locality pay raise for Federal employees (proposed 4.8 percent effective January 2000), the increased laboratory costs, and the applicable travel and operating costs. The fee increases will be effective January 1, 2000. At this time, FSIS is not amending the fee for the Accredited Laboratory Program.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130–S, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3552.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1999, FSIS published a proposed rule (64 FR 61223) to increase the fees that FSIS charges meat and poultry establishments, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services and laboratory services. FSIS provided 30 days for public comment, ending the comment period on December 10, 1999.

FSIS received one comment from a Canadian firm in response to the proposal. The concerns raised by the commenter addressed inspections performed by the Animal and Plant Health Inspection Service, and therefore, do no fall within the scope of this rulemaking.

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory inspection by Federal inspectors of meat and poultry slaughtered or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry. The cost of mandatory inspection (excluding such services performed on holidays or on an overtime basis) is borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection, certification, and identification services for meat and poultry. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts not subject to the FMIA

or the PPIA. These services include the certification of technical animal fats and the inspection of exotic animal products. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

FSIS also provides certain voluntary laboratory services that establishments or others may request FSIS to perform. The cost of these services, which are provided under the Agricultural Marketing Act of 1946, must be recovered by FSIS. Laboratory services are provided for four types of analytic testing. These are: Microbiological testing, residue chemistry tests, food composition tests, and pathology testing.

FSIS is making final the proposed regulations by amending 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $37.00 per hour per program employee to $37.88 per hour per program employee (an increase of 2.38%). FSIS is also amending § 391.3 to increase the rate for providing meat and poultry overtime and holiday inspection services from $36.84 per hour per program employee to $39.76 per hour per program employee (an increase of 7.93%). Additionally, FSIS is amending § 391.4 to increase the rate for meat and poultry laboratory services from $50.88 per hour per program employee to $58.52 per hour per program employee (an increase of 15.02%).

The increase in base time and overtime and holiday time rates is proportional to the salary increase and the inflation index rate recommended by the Office of Management and Budget for overhead costs (applicable travel and operating costs). The increase in laboratory services relative to the other two fees is due to (1) an increase in the direct costs of laboratory services and (2) a decrease in the hours of activity. The lower the usage, the higher the fee, because there are less hours over which to distribute the overhead costs.

To recover the increased costs in an expeditious manner, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**. Therefore, the fee increases will be effective January 1, 2000.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, it was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

The Administrator, FSIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the *Regulatory Flexibility Act* (5 U.S.C. 601). The fee increases provided for in this document reflect a small increase in the costs currently borne by those entities which elect to utilize certain inspection services *voluntarily.* These voluntary services are generally sought by larger establishments because of larger production volume or because of greater complexity and diversity in the products they produce; the small establishments do not seek these services perhaps because they cannot afford them. Therefore, the small establishments are not likely to be affected adversely by the increases.

The extent of incremental adverse impact is estimated from the percentage increases in base time and overtime and holiday rates. The increase in base time rate from $37.00/hour to $37.88/hour amounts to 2.38 percent. The overtime and holiday services rate from $36.84 to $39.76 amounts to 7.93 percent or about 8 percent. These increases are consistent with similar increases in wages and overtime rates in the private sector. For example, according to the Bureau of Labor Statistics web site, the average wage, including overtime, in the poultry slaughtering and processing industry (SIC 2015) increased by about 5 percent (from $344.73 per week in July 1998 to $361.70 in July 1999). The average hourly wage, excluding the overtime rate, increased by 4 percent during the same period. The increase in laboratory fees of 15.02 percent (from $50.88/hour to $58.52/hour) reflects an increase in the direct cost of these services to FSIS, coupled with lower usage by industry.

The economic impact of the increase in the fees on small businesses in the meat and poultry industries would depend on the structure of these industries. Data from the U.S. Bureau of the Census, Survey of Industries, 1994, indicate that the meat industry is dominated by small firms and establishments relative to the poultry industry. For example, based on the U.S. Small Business Administration's (SBA) definition of small business by the number of employees (fewer than 500), 96 percent of 1,226 firms comprising the meat industry (SIC 2011) are small. Similarly, 90 percent of individual meat establishments or plants in this industry are small. In 1994, these small businesses accounted for 19 percent of total employment in this industry. Their share of payroll was 18 percent of the total payroll of $2.777 billion and their revenues were 16 percent of the total revenues of $55.814 billion. In contrast, the poultry industry is comprised of relatively larger firms and establishments. For example, 51 percent of 567 establishments in this industry are large, according to the SBA definition. This industry has 332 firms with 207,875 workers and a payroll of $3.5 billion. The estimated revenue of this industry amounted to $27.111 billion in 1994.

FSIS believes that the small establishments in the meat and poultry industry will not be affected adversely by the increases in the fees for four reasons. First, the fee increases are voluntary so that the establishments do not have to seek the services of FSIS inspector program personnel. Second, establishments that seek FSIS services are likely to have calculated that the incremental costs of voluntary inspection services would be less than the incremental expected benefits of additional revenues they would realize from additional production. Third, the industry is likely to pass through the costs to consumers without significantly losing its market because price elasticity of demand for meat and poultry is inelastic. For example, Huang (1993) analyzed demand for meats and other products containing meat and poultry. Huang concluded that the price elasticity was −0.36, i.e., an increase in price of meat or poultry products by one percent would be associated with a decrease in its demand by only 0.36 percent. (Huang, Kao S., *A Complete System of U.S. Demand for Food.* USDA/ERS Technical Bulletin No. 1821, 1993, p.24). In short, consumers are unlikely to reduce their demand for meat and poultry significantly when meat or poultry prices are increased by a few pennies a pound. Finally, the supply of beef and poultry products is likely to be very price elastic because, as noted above, there are hundreds of firms in these industries. Any single producer cannot raise the price of its products without losing its market share significantly.

Executive Order 12988

This final rule has been reviewed by FSIS under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 of the FMIA and PPIA regulations, respectively, must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an

FSIS employee relating to inspection services provided under the FMIA or PPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY SERVICES

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $37.88 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 shall be $39.76 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12 and 362.5 shall be $58.52 per hour per program employee.

* * * * *

Done in Washington, DC on December 21, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–33667 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS99–1]

Appraisal Subcommittee; Appraiser Regulation; Disclosure of Information

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council (''ASC'').

ACTION: Final rules.

SUMMARY: The ASC is adopting amendments to its regulations governing the public disclosure of information to reflect changes to the Freedom of Information Act (''FOIA'') as a result of the enactment of the Electronic Freedom of Information Act Amendments of 1996 (''E–FOIA''). among other things, the new rules implement expedited FOIA processing procedures; implement processing deadlines and appeal rights created by E–FOIA; and describe the expanded range of records available to the public through the ASC's Internet World Wide Web site (*http://www.asc.gov*).

EFFECTIVE DATE: January 12, 2000.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, at (202) 872–7520 or marcwl@asc.gov; Appraisal Subcommittee; 2000 K street, NW, Suite 310; Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Authority and Section-by-Section Analysis

E–FOIA, Public Law 104–231, amended the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. Among other things, E–FOIA requires agencies to promulgate regulations that provide for expedited processing of certain requests for records. On October 22, 1999, the ASC proposed for comment these amendments to its related regulations in 12 CFR part 1102, subpart D (1999) (''subpart'') to implement E–FOIA. In addition, the ASC proposed changes to the subpart on fees and fee waivers, and portions of this subpart have been reorganized. These proposals were published for comment on November 1, 1999, at 64 FR 58800. No comments were received, and the ASC is adopting the proposed amendments as published, with the exception of a few minor stylistic and non-substantive changes.

Section 1102.300 has been expanded to clarify the purpose and scope of the various sections found within the subpart. Section 1102.301 has been amended to incorporate several E–FOIA definitions. Section 1102.302 remains unchanged. Section 1102.303 has been updated to reflect changes in the ASC's office address and staff organization. Current § 1102.304, which incorporated by reference the FOIA regulations of the Federal Financial Institutions Examination Council (''FFIEC''), has been deleted. New § 1102.304 specifies records that must be published in the **Federal Register** under FOIA. Section 1102.305 identifies the ASC's Internet World Wide Web site as the primary source of ASC information and describes the information that is made available over the Internet as required by E–FOIA. The section also sets out the categories of information that are publicly available upon request. The ASC notes that the records provided over the Internet cover a much smaller scope than those available by request. E–FOIA only requires the ASC to place on the Internet records created after November 1, 1996. The ASC, however, is increasing the resources available over the Internet on its World Wide Web site.

Section 1102.306 describes the ASC's procedures for processing FOIA requests. This section essentially is new because it no longer incorporates by reference the FFIEC's FOIA rules. It also reflects the changes required by E–FOIA. Because of the small size of the ASC and the dearth of FOIA requests received, the ASC has determined not to provide multitrack processing. The amendments, however, would provide expedited processing where a requester has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response. The time limit for expedited processing is set at ten business days, with expedited procedures available for an appeal of the ASC's determination not to provide expedited processing. Under E–FOIA, there are only two types of circumstances that can meet the compelling need standard: Where failure to obtain the records

expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the amendments use the term ''representative of the news media'' to describe a person primarily engaged in disseminating information. To demonstrate a compelling need, a requester must submit a certified statement, a sample of which may be obtained from the ASC.

All information requests that do not meet expedited processing standards will be handled under regular processing procedures, as required by FOIA and E–FOIA. The statutory time limit for regular-track processing would be extended to twenty business days, pursuant to E–FOIA, from the previous ten business days.

Section 1102.306(e) contains the FOIA fees and the standards for waiver of fees. The fee provisions have been revised to clarify that the processing time of a FOIA request does not begin until: (1) Payment is received when payment in advance is required, or (2) a person has requested a fee waiver and has not agreed to pay the fees if the waiver request is denied.

New § 1102.307 covers the disclosure of exempt records. The section prohibits the disclosure of exempt records, and, at the same time, authorizes the ASC, through its Chairman or Executive Director, to release certain types of otherwise exempt records upon receipt of a written request specifically identifying the subject records and providing sufficient information for the ASC to evaluate whether good cause for disclosure exists.

The next two sections, 1102.308 and 1102.309, carry over unchanged current 1102.30 and 1102.306, respectively.

The final section, 1102.310, is new. The section describes the procedures for serving subpoenas or other legal process on the ASC.

The ASC notes that the substantive portions of these amendments are based on 12 CFR part 309, the Federal Deposit Insurance Corporation's regulations concerning the disclosure of information.

II. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements regarding this collection of information were submitted to, and approved by, the Office of Management and Budget (OMB). A copy of this Information Collection Request document (OMB control number 3139–0006) may be obtained from Marc L. Weinberg, General Counsel; Appraisal Subcommittee; 2000 K Street, NW, Suite 310; Washington, DC 20006, or by calling (202) 872–7520. Today's action has no impact on the information collection burden estimates made previously. This change does not impose new requirements. In fact, by implementing E–FOIA, this change reduces existing burdens.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the ASC must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive 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.

Today's action does not fall within any of the four categories described above. Instead, it reduces the burden on information requestors implementing E–FOIA's broad electronic disclosure provisions. Consequently, under Executive Order 12866, this action is not a ''significant regulatory action'' and is therefore not subject to review by OMB.

C. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the ASC to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the ASC may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the ASC consults with State and local officials early in the process of developing the proposed regulation. The ASC also may not issue a regulation that has federalism implications and that preempts State law unless the ASC consults with State and local officials early in the process of developing the proposed regulation.

If the ASC complies by consulting, Executive Order 13132 requires the ASC to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (''FSIS''). The FSIS must include a description of the extent of ASC's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when ASC transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the ASC must include a certification from the agency's Federalism Official stating that ASC has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action has minimal, if any, impacts associated with this action; thus, the requirements of § 6 of the Executive Order do not apply to this rule.

D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act, Pub. L. 96–354, whenever a Federal agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (''REA'') that describes the impact of the rule on small entities (*i.e.*, small businesses, organizations, and

governmental jurisdictions). That analysis is not necessary if the agency determines that the rule will not have a significant economic impact on a substantial number of small entities.

The ASC believes that promulgation of this rule, rather than imposing additional requirements, reduces previous requirements because it implements E–FOIA's broad public disclosure provisions. Because the impacts are anticipated to be insignificant or beneficial, ASC has concluded that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, an RFA is not required.

E. 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 § 202 of the UMRA, ASC 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. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, this rule relieves previous burdens by implementing E–FOIA. Because the rule is not expected to result in the expenditure by State, local, and tribal governments or the private sector of $100 million or more in any one year, the ASC has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the ASC is not required to develop a plan with regard to small governments. For the reasons stated above, the requirements of the UMRA do not apply to this section.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, banking, Freedom of Information, Mortgages, Reporting and recordkeeping requirements.

Text of the Rule

For the reasons set forth in the preamble, title 12, chapter XI, of the Code of Federal Regulations is amended as follows:

PART 1102—APPRAISER REGULATION

Subpart D—Description of Office, Procedures, Public Information

1. The authority citation for part 1102, subpart D continues to read as follows:

Authority: 5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p 235).

2. Section 1102.300 is revised to read as follows:

§ 1102.300 Purpose and scope.

This part sets forth the basic policies of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (''ASC'') regarding information it maintains and the procedures for obtaining access to such information. This part does not apply to the Federal Financial Institutions Examination Council. Section 1102.301 sets forth definitions applicable to this part 1102, subpart D. Section 1102.302 describes the ASC's statutory authority and functions. Section 1102.303 describes the ASC's organization and methods of operation. Section 1102.304 describes the types of information and documents typically published in the **Federal Register**. Section 1102.305 explains how to access public records maintained on the ASC's World Wide Web site and at the ASC's office and describes the categories of records generally found there. Section 1102.306 implements the Freedom of Information Act (''FOIA'') (5 U.S.C. 552). Section 1102.307 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 1102.308 provides anyone with the right to petition the ASC to issue, amend, and repeal rules of general application. Section 1102.309 sets out the ASC's confidential treatment procedures. Section 1102.310 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the ASC.

3. Section 1102.301 is revised to read as follows:

§ 1102.301 Definitions.

For purposes of this subpart:

(a) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) *Commercial use request* means a request from, or on behalf of, a requester who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the ASC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(c) *Direct costs* means those expenditures the ASC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(d) *Disclose or disclosure* mean to give access to a record, whether by producing the written record or by oral discussion of its contents. Where the ASC member or employee authorized to release ASC documents makes a determination that furnishing copies of the documents is necessary, these words include the furnishing of copies of documents or records.

(e) *Duplication* means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (*e.g.*, magnetic tape or computer disk).

(f) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(g) *Field review* includes, but is not limited to, formal and informal investigations of potential irregularities occurring at State appraiser regulatory agencies involving suspected violations of Federal or State civil or criminal laws, as well as such other investigations as may conducted pursuant to law.

(h) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in paragraph (b) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i) *Record* includes records, files, documents, reports correspondence, books, and accounts, or any portion thereof, in any form the ASC regularly maintains them.

(j) *Representative of the news media* means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast

news to the public. The term news means information that is about current events or that would be of current interest to the general public.

(k) *Review* means the process of examining documents located in a response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(m) *State appraiser regulatory agency* includes, but is not limited to, any board, commission, individual or other entity that is authorized by State law to license, certify, and supervise the activities or persons authorized to perform appraisals in connections with federally related transactions and real estate related financial transactions that require the services of a State licensed or certified appraiser.

4. Section 1102.303 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1102.303 Organization and methods of operation.

(a) * * *

(b) *ASC members and staff.* The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy, and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by an Executive Director.

(c) * * *

(d) *ASD Address* ASC offices are located at 2000 K Street, NW, Suite 310; Washington, DC 20006.

5. Section 1102.304 is revised to read as follows:

§ 1102.304 Federal Register publication.

The ASC publishes the following information in the **Federal Register** for the guidance of the public:

(a) Description of its organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or re nests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the ASC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rulemaking.

6. Section 1102.305 is amended by revising the the section heading and paragraphs (a) and (c) to read as follows:

§ 1102.305 Publicly available records.

(a) *Records available on the ASCs World Wide Web site*—(1) Discretionary release of documents. The ASC encourages the public to explore the wealth of resources available on the ASC's Internet World Wide Web site, located at: *http://www.asc.gov*. The ASC has elected to publish a broad range to materials on its Web site.

(2) *Documents required to be made available via computer telecommunications.* (i) The following types of documents created on or after November 1, 1996, and required to be made available through computer telecommunications, may be found on the ASC's Internet World Wide Web site located at: *http://www.asc.gov:*

(A) Final opinions, including concurring and dissenting opinions, as well as final orders, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the ASC that are not published in the **Federal Register**;

(C) Administrative staff manuals and instructions to staff that affect a member of the public;

(D) Copies of all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under § 1102.306 that, because of the nature of their subject matter, the ASC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the ASC may delete identifying details when it makes available or publishes any records. If reduction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

* * * * *

(c) *Applicable fees.* (1) If applicable, fees for furnishing records under this section are as set forth in § 1102.306(e).

(2) Information on the ASC's World Wide Web site is available to the public without charge. If, however, information available on the ASC's World Wide Web site is provided pursuant to a Freedom of Information Act request processed under g 1102.306 then fees apply and will be assessed pursuant to § 1102.306(e).

§§ 1102.306 and 1102.307 [Redesignated as §§ 1102.309 and 1102.308]

7. Sections 1102.306 and 1102.307 are redesignated as §§ 1102.309 and 1102.308 respectively.

8. A new § 1102.306 is added to read as follows:

§ 1102.306 Procedures for requesting records.

(a) *Making a request for records.* (1) The request shall be submitted in writing to the Executive Director:

(i) By facsimile clearly marked ''Freedom of Information Act Request'' to (202) 872–7501;

(ii) By letter to the Executive Director marked ''Freedom of Information Act Request''; 2000 K Street, NW, Suite 301; Washington, DC 20006; or

(iii) By sending Internet e-mail to the Executive Director marked ''Freedom of Information Act Request'' at his or her e-mail address listed on the ASC's World Wide Web site.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, non-commercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (e)(1)(x) of this section; and

(ii) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the ASC's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any ASC operations.

(b) *Defective requests.* The ASC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this subpart. The ASC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(c) *Processing requests.* (1) *Receipt of requests.* Upon receipt of any request that satisfies paragraph (a) of this section, the Executive Director shall assign the request to the appropriate processing track pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Executive Director actually receives the request.

(2) *Expedited processing.* (i) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the ASC has determined to expedite the response, the ASC shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(A) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) The requester can establish that it is primarily engaged in information dissemination as its main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the re request; and

(C) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(ii) The formality of the certification required to obtain expedited treatment may be waived by the Executive Director as a matter of administrative discretion.

(3) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (g) of this section, and the ASC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(4) *Priority of responses.* Consistent with sound administrative process, the ASC processes requests in the order they are received. However, in the ASC's discretion, or upon a court order in a matter to which the ASC is a party, a particular request may be processed out of turn.

(5) *Notification.* (i) The time for response to requests will be twenty (20) working days except:

(A) In the case of expedited treatment under paragraph (c)(2) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the ASC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed $250 as provided for in paragraph (e)(1)(iv) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to the paragraph (c)(5)(i)(B) and (e)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (c)(5)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (c)(5)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the ASC when the ASC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities that are not located at the ASC's Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the ASC having a substantial interest in the determination.

(6) *Response to request.* In response to a request that satisfies the requirements of paragraph (a) of this section, a search shall be conducted of records maintained by the ASC in existence on the date of receipt of the request, and a review made of any responsive information located. To the extent permitted by law, the ASC may redact identifying details when it makes available or publishes any records. If redaction is appropriate, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The ASC shall notify the requester of:

(i) The ASC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the ASC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the Chairman of the ASC within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(d) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the ASC or makes other acceptable arrangements, or the ASC deems it appropriate to send the documents by another means.

(2) The ASC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the ASC in that form or format, but the ASC need not provide more than one copy of any record to a requester.

(3) By arrangement with the requester, the ASC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be provided.

(e) *Fees* (1) *General rules.* (i) Persons requesting records of the ASC shall be charged for the direct costs of search, duplication, and review as set forth in paragraphs (e)(2) and (e)(3) of this section, unless such costs are less than the ASC's cost of processing the requester's remittance.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if

located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the ASC determines that the estimated costs of search, duplication, or review of requested records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the ASC will advise the requester of the estimated costs. The requester must agree in writing to pay the costs of search, duplication, and review prior to the ASC initiating any records search.

(v) If the ASC estimates that its search, duplication, and review costs will exceed $250, the requester must pay an amount equal to 20 percent of the estimated costs prior to the ASC initiating any records search.

(vi) The ASC ordinarily will collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The ASC may require any requester who has previously failed to pay charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The ASC also may require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the ASC initiating any additional records search.

(viii) The ASC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in § 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the ASC to respond to a request will not begin to run until the ASC has received the requester's written agreement under paragraph (e)(1)(iv) of this section, and advance payment under paragraph (e)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (e)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the ASC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Director (or designee), and the requester will be notified in writing of his or her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the ASC's Chairman pursuant to the procedure set forth in paragraph (g) of this section.

(2) *Chargeable fees by category of requester.* (i) Commercial use requesters shall be charged search, duplication, and review costs.

(ii) Educational institutions, noncommercial scientific institutions, and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (e)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the ASC may charge to records requesters will be established by the Executive Director. The ASC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change. The fee schedule will be published periodically on the ASC's Internet World Wide Web site (*http://www.asc.gov*) and will be effective on the date of publication. Copies of the fee schedule may be obtained by request at no charge by contacting the Executive Director by letter, Internet email or facsimile.

(i) *Manual searches for records.* The ASC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportioned to the search multiplied by the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is $.25.

(B) For other methods of reproduction or duplication, the ASC will charge the actual direct costs of reproducing or duplicating the documents, including each involved employee's basic rate of pay plus 16 percent to cover employee benefit costs.

(iv) *Review of records.* The ASC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. The ASC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the ASC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services, other than a readily produced electronic form or format, is at the ASC's discretion. The ASC may recover the full costs of providing such services to the requester.

(4) *Use of contractors.* The ASC may contact with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the ASC has determined that the ultimate cost to the requester will be no greater than it would be if the ASC performed these tasks itself. In no case will the ASC contract our responsibilities which FOIA provides that the ASC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(f) *Exempt information.* A request for records may be denied if the requested record contains information that falls into one or more of the following categories.[1] If the requested record contains both exempt and nonexempt information, the nonexempt portions, which may reasonable be segregated from the exempt portions, will be released to the requester. If redaction is necessary, the ASC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The categories of exempt records are as follows:

(1) Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the ASC;

(3) Records specifically exempted from disclosure by statute, provided that such statute:

[1] Classification of a record as exempt from disclosure under the provisions of this paragraph (f) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other Federal statute, any applicable regulation of ASC or any other Federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the ASC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trail or an impartial adjudication;

(ii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the ASC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(g) *Appeals.* (1) Appeals should be addressed to the Executive Director; ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (e)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the ASC's Chairman (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (c)(3) of this section, the ASC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the ASC will notify the appellant within ten business days after receipt of the appeal of the ASC's disposition.

(5) Complete payment of any outstanding fee invoice will be required before an appeal is processed.

(h) *Records of another agency.* If a requested record is the property of another Federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the ASC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

(9) A new § 1102.307 is added to read as follows:

§ 1102.307 Disclosure of exempt records.

(a) *Disclosure prohibited.* Except as provided in paragraph (b) of this section or by 12 CFR part 1102, subpart C, no person shall disclose or permit the disclosure of any exempt records, or information contained therein, to any persons other than those officers, directors, employees, or agents of the ASC or a State appraiser regulatory agency who has a need for such records in the performance of their official duties. In any instance in which any person has possession, custody or control of ASC exempt records or information contained therein, all copies of such records shall remain the property of the ASC and under no circumstances shall any person, entity or agency disclose or make public in any manner the exempt records or information without written authorization from the Executive Director, after consultation with the ASC General Counsel.

(b) *Disclosure authorized.* Exempt records or information of the ASC may be disclosed only in accordance with the conditions and requirements set forth in this paragraph (b). Requests for discretionary disclosure of exempt records of information pursuant to this paragraph (b) may be submitted directly to the Executive Director. Such administrative request must clearly state that it seeks discretionary disclosure of exempt records, clearly identify the records sought, provide sufficient information for the ASC to evaluate whether there is good cause for disclosure, and meet all other conditions set forth in paragraph (b)(1) through (3) of this section. Authority to disclose or authorize disclosure of exempt records of the ASC is delegated to the Executive Director, after consultation with the ASC General Counsel.

(1) *Disclosure by Executive Director.* (i) The Executive Director, or designee, may disclose or authorize the disclosure of any exempt record in response to a valid judicial subpoena, court order, or other legal process, and authorize any current or former member, officer, employee, agent of the ASC, or third party, to appear and testify regarding an exempt record or any information obtained in the performance of such person's official duties, at any administrative or judicial hearing or proceeding where such person has been served with a valid subpoena, court order, or other legal process requiring him or her to testify. The Executive Director shall consider the relevancy of such exempt records or testimony to the ligation, and the interests of justice, in determining whether to disclose such records or testimony. Third parties seeking disclosure of exempt records or testimony in litigation to which the ASC is not a party shall submit a request for discretionary disclosure directly to the Executive Director. Such requests shall specify the information sought with reasonable particularity and shall be accompanied by a statement with supporting documentation showing in detail the relevance of such exempt information to the litigation, justifying good cause for disclosure, and a commitment to be bound by a protective order. Failure to exhaust such administration request prior to service of a subpoena or other legal process may, in the Executive Director's discretion, serve as a basis for objection to such subpoena or legal process.

(ii) The Executive Director, or designee, may in his or her discretion and for good cause, disclose or

authorize disclosure of any exempt record or testimony by a current or former member, officer, employee, agent of the ASC, or third party, sought in connection with any civil or criminal hearing, proceeding or investigation without the service of a judicial subpoena, or other legal process requiring such disclosure or testimony. If he or she determines that the records or testimony are relevant to the hearing, proceeding or investigation and that disclosure is in the best interests of justice and not otherwise prohibited by Federal statute. Where the Executive Director or designee authorizes a current or former member, officer, director, empl9oyee or agent of the ASC to testify or disclose exempt records pursuant to this paragraph (b)(1), he or she may, in his or her discretion, limit the authorization to so much of the record or testimony as is relevant to the issues at such hearing, proceeding or investigation, and he or she shall give authorization only upon fulfillment of such conditions as he or she deems necessary and practicable to protect the confidential nature of such records or testimony.

(2) *Authorization for disclosure by the Chairman of the ASC.* Except where expressly prohibited by law, the Chairman of the ASC may, in his or her discretion, authorize the disclosure of any ASC records. Except where disclosure is required by law, the Chairman may direct any current or former member, officer, director, employee or agent of the ASC to refuse to disclose any record or to give testimony if the Chairman determines, in his or her discretion, that refusal to permit such disclosure is in the public interest.

(3) *Limitations on disclosure.* All steps practicable shall be taken to protect the confidentiality of exempt records and information. Any disclosure permitted by paragraph (b) of this section is discretionary and nothing in paragraph (b) of this section shall be construed as requiring the disclosure of information. Further, nothing in paragrah (b) of this section shall be construed as restricting, in any manner, the authority of the ASC, the Chairman of the ASC, the Executive Director, the ASC General Counsel, or their designees, in their discretion and in light of the facts and circumstances attendant in any given case, to require conditions upon, and to limit, the form, manner, and extent of any disclosure permitted by this section. Wherever practicable, disclosure of exempt records shall be made pursuant to a protective order and redacted to exclude all irrelevant or non-responsive exempt information.

10. Section 1102.310 is added as follows:

§ 1102.310 Service of process.

(a) *Service.* Any subpoena or other legal process to obtain information maintained by the ASC shall be duly issued by a court having jurisdiction over the ASC, and served upon the Chairman ASC; 2000 K Street, NW, Suite 310; Washington, DC 20006. Where the ASC is named as a party, service of process shall be made pursuant to the Federal Rules of Civil Procedure upon the Chairman at the above address. The Chairman shall immediately forward any subpoena, court order or legal process to the General Counsel. If consistent with the terms of the subpoena, court order or legal process, the ASC may require the payment of fees, in accordance with the fee schedule referred to in § 1102.306(e) prior to the release of any records requested pursuant to any subpoena or other legal process.

(b) *Notification by person served.* If any current or former member, officer, employee or agent of the ASC, or any other person who has custody of records belonging to the ASC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the ASC, such person shall promptly advise the Executive Director of such service, the testimony and records described in the subpoena, and all relevant facts that may assist the Executive Director, in consultation with the ASC General Counsel, in determining whether the individual in question should be authorized to testify or the records should be produced. Such person also should inform the court or tribunal that issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) *Appearance by person served.* Absent the written authorization of the Executive Director or designee to disclose the requested information, any current or former member, officer, employee, or agent of the ASC, and any other person having custody of records of the ASC, who is required to respond to a subpoena or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Counsel.

Dated: December 20, 1999.

Herbert S. Yolles,

Chairman.

[FR Doc. 99–33476 Filed 12–27–99; 8:45 am]

BILLING CODE 6201–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1780

RIN 2550–AA04

Rules of Practice and Procedure

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule that establishes the rules of procedure to be followed when OFHEO conducts hearings on the record and rules of practice before OFHEO. The rule implements the provisions of title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, regarding hearings on the record in certain enforcement actions against the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or directors or executive officers of the Enterprises. The rule provides OFHEO personnel, the Enterprises, the Enterprises' directors and executive officers, and other interested parties with the guidance necessary to prepare for and participate in such hearings.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: David A. Felt, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3829 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Supplementary Information is organized according to this table of contents:

I. Background
II. Comments on the Proposed Rules of Practice and Procedures
III. Synopsis of the Final Rule
IV. Regulatory Impact

I. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial

Safety and Soundness Act of 1992 (1992 Act), established OFHEO as an independent office within the Department of Housing and Urban Development (HUD) to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operated in a safe and sound manner. Subsection 1313(b) of the 1992 Act refers to certain authorities that the Director of OFHEO (Director) may exercise exclusive of the Secretary of HUD (Secretary) [1] and other authorities that are subject to review and approval by the Secretary.[2] The Secretary's roles, duties, and responsibilities may be delegated to the Director. Among the exclusive authorities of the director is the authority to issue regulations to carry out the duties of the Director under Subtitle C of the Act.[3] Prior to issuing a cease-and-desist order, OFHEO must conduct hearings on the record and provide the subjects of the order with notice and the opportunity to participate in such hearings.[4] Prior to imposing civil money penalties, OFHEO must provide notice and the opportunity for a hearing to the persons subject to the penalties.[5] This final rule provides the rules of practice and procedure that will be applied in these hearings and any other hearings on the record that may be conducted by the Director.

Fannie Mae and Freddie Mac are Government-sponsored enterprises with important public purposes. These purposes include providing liquidity to the residential mortgage market and increasing the availability of mortgage credit benefiting low- and moderate-income families, rural areas, central cities, and areas that are underserved by lending institutions. The Enterprises engage in two principal businesses: investing in residential mortgages and guaranteeing residential mortgage securities. The securities they guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States.[6] Despite the absence of such Federal backing, prices of Enterprise debt securities reflect a market perception that the U.S. Government has a strong interest in preventing a default by either Enterprise. This perception principally arises from the public purposes of the Enterprises, their Federal charters, their potential access to a U.S. Treasury line of credit and the statutory exemptions of their debt and mortgage-backed securities from otherwise mandatory investor protection provisions.[7] This perception is bolstered by concern that the insolvency of either Enterprise would have serious consequences for the nation's housing markets and financial system.

On September 24, 1998 (63 FR 51031), OFHEO published a Notice of Proposed Rulemaking (NPR) that included proposed Rules of Practice and Procedure. The NPR proposed rules of procedure for hearings on the record before OFHEO and rules of practice governing individuals who practice before OFHEO. The comment period closed December 23, 1998.

OFHEO received comments from each Enterprise in response to the proposed rulemaking. A discussion of those comments follows.

II. Comments on the Proposed Rules of Practice and Procedure

General Comments

Fannie Mae fully supported OFHEO's efforts to formalize the rules of practice and procedure governing the conduct of hearings on the record. Fannie Mae stated its belief that any such hearing in the future would occur only in the most extraordinary of circumstances and emphasized its commitment to working with OFHEO in a good faith, constructive relationship. Fannie Mae offered various comments and recommended a number of changes that Fannie Mae asserts would make the rules more consistent with the Administrative Procedure Act (APA) [8] and with the practices in place at the Federal banking agencies. Although, as explained below, OFHEO does not share the view that anything in the proposed rule was inconsistent with the APA, OFHEO found that some of the recommended changes added clarity to the rule and has incorporated them. Each of the recommendations is discussed in detail below.

Freddie Mac expected that administrative enforcement proceedings would occur rarely, if ever, and that OFHEO would not consider initiating such a proceeding until both sides have sought cooperatively to resolve the matters at issue through alternative means. Freddie Mac stated that if OFHEO were to initiate a hearing on the record, the rules of practice and procedure should conform with OFHEO's statutory enforcement authority and be suited to the potential issues and parties to such a proceeding. In this regard, Freddie Mac recommended a number of changes that would, in its view, improve the rules by fostering early resolution, streamlining the provisions addressing sanctions to limit sanctions against individuals to those necessary to conduct an adjudicatory hearing or related proceedings, and ensuring fairness and due process. As explained below, OFHEO has considered each of these recommendations and, in response to some of them, has made changes in the final rule.

Utilize Pre-Filing Submissions To Foster Early Resolution

Freddie Mac's comments encouraged OFHEO to adopt a procedure that would allow a potential respondent to submit a written statement of its position, prior to filing a formal notice of charges. Freddie Mac felt that a prior submission could provide the agency with additional facts, allow prompt and early correction of any miscommunication and point out weaknesses in the agency's preliminary position. In these and other ways, Freddie Mac suggests, the submission would assist OFHEO in making a well-reasoned decision about whether to pursue an alternative resolution or initiate a formal enforcement action. Freddie Mac cited a statement by the Securities and Exchange Commission (SEC) as an example of successful use of such prior submissions, which that agency has used for more than 20 years to help determine whether to file or otherwise initiate a formal proceeding.[9]

OFHEO shares Freddie Mac's desire to foster early resolution of enforcement matters and to ensure well-reasoned decision-making in determining whether to pursue formal enforcement actions. OFHEO has reviewed the cited SEC release and the practices of other

[1] 12 U.S.C. 4513(b).

[2] Any determinations, actions or functions of the Director that are not referred to in subsection 1313(b) are subject to the review and approval of the Secretary. 1992 Act, section 1313(c) (12 U.S.C. 4513(c)).

[3] 1992 Act, section 1313(b) (12 U.S.C. 4513(b)).

[4] 1992 Act, section 1371 (12 U.S.C. 4631).

[5] 1992 Act, section 1376 (12 U.S.C. 4636).

[6] Federal Home Loan Mortgage Corporation act, sections 301(4) and 306(h)(2), (12 U.S.C. 1451 *note* (b)(3)–(4), 12 U.S.C. 1455(h)(2)); Federal National Mortgage Association Charter Act, sections 301(4) and 304(b) (12 U.S.C. 1716(3)–(4), 12 U.S.C. 1719(b)); and 1992 Act, section 1302(4) (12 U.S.C. 4501(4)).

[7] *See, e.g.,* 12 U.S.C. 24 (authorizing unlimited investment by national banks in obligations of, or issued by, the Enterprises); 12 U.S.C. 1455(g), 1719(d) and 1723c (exempting Enterprise securities from oversight from Federal regulators); 15 U.S.C. 77r–l(a) (preempting State law that would treat Enterprise securities differently from obligations of the United States for investment purposes); and 15 U.S.C. 77r–l(c) (exempting Enterprise securities from State securities laws).

[8] 5 U.S.C. 500–559.

[9] Securities Act Release No. 5310, 38 FR 5457, Mar. 1, 1973.

agencies. None of those agencies has published a regulation providing for submissions prior to a notice of charges. OFHEO will permit persons involved in an investigation to present a statement to OFHEO setting forth their interests and position. However, OFHEO cannot put itself in a position where, as a result of the establishment of formal procedural requirements, it would lose its ability to respond timely to actionable activities or conditions. Accordingly, OFHEO will not include among its procedural regulations a requirement that OFHEO obtain or solicit views or statements from persons against which notices of charges are soon to be issued.

Section 1780.1 Scope

Fannie Mae recommended that the term ''director of any Enterprise'' at § 1780.1(b) be defined in order to ''clarify that the term 'directors' means members of the board of directors.'' The term, as used in this section of the final rule, refers to sections 1371 and 1376 of the 1992 Act and is intended to have the same meaning as the same term in the Act. Accordingly, OFHEO found it unnecessary to define the term in the final rule.

Freddie Mac recommended that § 1780.1 be amended to list civil money penalty hearings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a, among the hearings subject to the regulation. Although, as Freddie Mac noted, such hearings would be covered by the catchall provision in the section, OFHEO has incorporated the recommended change to make that coverage explicit.

Section 1780.3 Definitions

Both Enterprises commented about proposed § 1780.3(h), which defined the term ''presiding officer'' to be ''an administrative law judge or any other person designated by the Director to conduct a hearing.'' Fannie Mae recommended that OFHEO specify that only an ALJ should be permitted to conduct administrative hearings. Fannie Mae included a description of the administrative law judge (ALJ) program and opined that the APA does not contemplate that an agency head appoint ''any person'' to preside over hearings conducted on the record. Fannie Mae stated that the rule does ''not set forth any justification for OFHEO's departure from the commonly understood rules of the APA or from the practice of other safety and soundness regulators.'' Fannie Mae asserts that allowing persons other than ALJs to preside over hearings under the APA is inconsistent with accepted APA principles and with the uniform practice of the Federal banking agencies and HUD.

The use of the term ''any other person'' in § 1780.3(h) of the proposed rules was not intended to suggest that the Director might ignore the APA or other applicable law in appointing presiding officers. It was intended as a recognition that the APA includes exceptions to the general rule that the agency (in the case of boards or commissions), the agency head or an ALJ shall preside at a hearing.[10] For example, the regulations of the United States Office of Personnel Management relating to ALJs also allow temporary appointment of qualified Federal annuitants, described as ''senior administrative law judges'' under certain circumstances.[11] However, in addressing Fannie Mae's comment, OFHEO has modified the language permitting persons other than ALJs to act as presiding officers, as discussed below.

The use of the term ''any other person'' was not intended to imply that the circumstances that would require these other types of presiding officers are likely to occur in OFHEO enforcement proceedings. Neither was it intended to take a legal position that OFHEO did not consider its hearings to be governed by the APA or other applicable laws (such as those listed at § 1780.1). However, because these rules are intended to have broad applicability to any hearings that are required to be on the record, including any that might be added by future legislation, OFHEO chose to provide maximum flexibility under whatever law is applicable, now or in the future. To clarify this point, OFHEO has replaced the phrase ''designated by the Director'' with ''appointed by the Director under applicable law.''

OFHEO agrees that the practice of the agencies cited by Fannie Mae is to utilize ALJs. That would generally be OFHEO's practice also. However, in drafting the definition of presiding officer, OFHEO looked to the Uniform Rules of the Federal bank and thrift regulators. The Uniform Rules, which use the term ''administrative law judge'' where the OFHEO rules use ''presiding officer,'' define ''administrative law judge'' to mean ''one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.'' As explained above, that person or body of persons need not always be an administrative law judge. OFHEO has followed the same general approach, allowing for persons other than an administrative law judge to preside, but only where they can be appointed under applicable law.

Freddie Mac recommended that, to help ensure the fairness and impartiality of administrative proceedings, the rule be changed to insert the word ''neutral'' to describe the ALJ or other person. OFHEO concurs with the Enterprises that any presiding officer should be impartial and fair. However, OFHEO disagrees with Freddie Mac that adding the word ''neutral'' to the regulation would further this goal. The provisions of the APA that govern selection of presiding officers and the conduct of hearings apply to proceedings under this final rule and are sufficient to insure impartiality and fairness.

Sections 1780.5 Authority of the Presiding Officer and 1780.6 Public Hearings

Each Enterprise commented that § 1780.6(c) should be modified to allow any party to request that documents be filed under seal. Fannie Mae explained its view that confidentiality goes to the heart of the fairness of a hearing and that allowing an agency, but not the other parties, to file confidential documents is unfair. Freddie Mac also felt that a change to allow all parties to request that a document be filed under seal was necessary to ensure fairness to all parties.

OFHEO concurs with the need to ensure confidentiality of some documents and testimony in adjudicatory proceedings and agrees that all parties should be able to request confidentiality. Moreover, OFHEO believes that the authority to order documents to be filed under seal is among the inherent powers of the presiding officer under § 1780.5 to conduct a hearing and to rule on motions or procedural matters. However, in response to the comments, OFHEO has included some additional language in the final rule. This language, which is drawn from the Uniform Rules of the Federal financial institution regulatory agencies, emphasizes the authority of the presiding officer to maintain confidentiality of documents where appropriate. Specifically, § 1780.5(b)(5) now includes expressly the authority to issue protective orders and § 1780.5(b)(15) now includes expressly the authority to establish time, place and manner limitations on the attendance of the public and the media for any public hearing. These changes clarify that the presiding officer may issue a protective order to maintain

[10] 12 U.S.C. 556(a).

[11] 5 CFR 930.216.

confidentiality of documents a party seeks to file or is required to disclose in discovery. Further, these changes make explicit the authority of the presiding officer to maintain confidentiality of those documents by excluding the public from portions of a hearing where those documents may be introduced or discussed.

Section 1780.10 Service of Papers

The Enterprises each commented upon proposed § 1780.10. Freddie Mac recommended that OFHEO customize the language of this section to the Enterprises by requiring service by OFHEO upon the Enterprises or other respondents at a designated office within each Enterprise. Freddie Mac suggested that language in the rule that allows service by delivery to a person of suitable age and discretion at the physical location where the individual resides or works was unnecessary, because service of all such individuals could be made at the designated office of the appropriate Enterprise. Freddie Mac further recommended that OFHEO designate a hearing clerk to receive and log in papers in situations where a presiding officer has not yet been assigned. Fannie Mae asked that OFHEO clarify proposed § 1780.10(f), asserting that the following language was confusing: ''Failure to make proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.'' Fannie Mae asked why it was necessary to supply proof of service at all if failure to do so does not affect validity of service.

OFHEO does not believe it necessary to adopt the service rules recommended by Freddie Mac. OFHEO retains discretion to determine how best to serve a notice of charges against an Enterprise under particular circumstances. After initial service, OFHEO anticipates that counsel for the Enterprise would enter an appearance and service of all documents would be upon counsel. With respect to service upon individuals against whom charges are brought, the service rules are tailored to make reasonably certain that the individual receives notice of the documents served. OFHEO's enforcement authorities are not limited to current Enterprise employees and the service rules must reach all possible recipients of documents in an enforcement action, including those who might seek to avoid service. Moreover, OFHEO does not wish to preclude service by various reasonable means should circumstances require it. Therefore, OFHEO has not modified the language in the final rule to allow the Enterprises to designate a particular office for service upon the Enterprise and individuals.

OFHEO finds it unnecessary to specify by rule an individual or an office within OFHEO for service or filing of documents related to a hearing. In enforcement proceedings, the Director will be represented by enforcement counsel upon whom service may be made. If a presiding officer is not named in the notice of charges, an appropriate address for filing of an answer to the notice will be provided in the notice.

OFHEO concurs with Fannie Mae that § 1780.10(f) of the proposed rules could be clarified. The final rule, therefore, makes clear that a party may contest service only by claiming that actual service was not made. The term ''proof of service'' is used to mean an affidavit by a nonattorney or a declaration of counsel, filed and served with the pleading or other document, stating when and by what means the document was served. Such an affidavit or declaration establishes prima facie that service was made and shifts the burden to a party contesting service to come forward with evidence that service did not occur. The failure of a party to include a proof of service with the document would not alone be sufficient to prove lack of service or cause the filing of such a document to be ineffective. Service could, if necessary, be proven by other means. However, a proof of service must be filed before the presiding officer can take action upon a filing, such as a motion, that seeks such action. This rule prevents action being taken without notice being provided to the nonmoving parties.

Section 1780.15 OFHEO's Right To Conduct Examinations

Freddie Mac recommended that § 1780.15 be revised to provide that OFHEO's examination authority not be used for after-the-fact gathering of evidence to support a notice of charges that has already been issued. Freddie Mac stated that the Director must have reasonable cause to believe that grounds exist for initiating an action by the time the Director serves the notice.

OFHEO decided not to accept Freddie Mac's recommendation to modify § 1780.15 for a number of reasons. First, it would be inappropriate and unprecedented for a Federal financial institution regulatory agency to prevent itself from using the most recent factual information available. The language in § 1780.15 is drawn directly from the Uniform Rules of the bank and thrift regulators and reflects normal examination and enforcement practices. As a matter of practice, Federal financial institution regulatory agencies generally do not issue notices of charges until a supporting factual record is adequately developed. In this regard, OFHEO would be no different from these other regulatory agencies. However, OFHEO does not consider it unfair or improper to allow relevant information to be introduced at hearing that may have come to light from an examination conducted after the notice of charges. Any such information would be available to all parties through discovery. OFHEO's rules anticipate that additional facts may come to light during the prehearing phase and the rules allow for liberal amendments to notices of charges and answers to reflect those newly discovered facts.

Further, because the purpose of cease and desist orders is largely remedial, it is especially important in fashioning such an order that the presiding officer and the Director understand any steps an Enterprise may have undertaken (or not undertaken) to deal with the problems at issue since the filing of the notice of charges. Current practices at an Enterprise could also be relevant in determining the appropriateness and size of civil money penalties. Examinations are an important means of providing current information.

OFHEO is also concerned that any rule that limits the use of current examination findings at hearing could tend to chill the examination process. Examiners might be reluctant to examine areas at issue in the hearing out of concern that their work might raise issues about whether facts introduced at hearing were discovered after service of the notice of charges. The result could be that OFHEO would be hindered in its ability to examine those areas that were experiencing the worst problems at the Enterprise.

Finally, a rule such as Freddie Mac suggests would require discovery and collateral hearings to determine the source of much of OFHEO's evidence. In OFHEO's view, such collateral proceedings would be inappropriate, because the proper issue is whether parties have had sufficient time to consider new evidence, not whether OFHEO obtained it in an examination after a notice of charges was filed. Further, the appropriate remedy in the event that there has been insufficient time is to extend the hearing date, not to exclude the evidence.

Section 1780.20 Commencement of Proceeding and Contents of Notice of Charges

Fannie Mae and Freddie Mac each recommended that OFHEO modify § 1780.20(b) to delete the proposed language requiring the notice of charges to state ''the matters of fact or law showing that OFHEO is entitled to relief'' and replace it with a requirement that the notice of charges include ''a statement of the facts constituting the alleged conduct or violation.'' Fannie Mae stated that the recommended language, which is drawn directly from the 1992 Act, 12 U.S.C. 4631(c), would require greater specificity in the initial notice, ensure more fairness, and better enable the respondent to answer the charges.

OFHEO decided not to modify the language of § 1780.20(b). This NPR language is virtually identical to the Uniform Rules of the Federal bank and thrift regulators.[12] The governing statute for those regulatory agencies, 12 U.S.C. 1818(b)(1), uses language identical in relevant part to that of the 1992 Act. OFHEO intends its procedures in regard to notices of charges to be the same as those of the Federal bank and thrift regulators and, accordingly, is utilizing the same language to describe the requirements for those notices.

Further, OFHEO does not understand the language of § 1780.20(b) to be narrower than the statutory language. The regulatory language merely clarifies a level of specificity that is adequate to meet the statutory requirement. The notice of charges is not intended to provide a full and complete factual explication of the case against a respondent. Respondents may use discovery to obtain additional details. The notice of charges is intended simply to place respondents on notice of the nature of the charges against them, with sufficient specificity to allow them to prepare an answer and frame discovery requests. More complex and technical pleading requirements would, in OFHEO's view, add unnecessary and inefficient burden to the hearing process.

Fannie Mae recommended that § 1780.20(d) be amended to include language from section 1373(a)(2) of the 1992 Act (12 U.S.C. 4633(a)(2)) that requires hearings on cease and desist orders to be fixed for a date not earlier than 30 days nor later than 60 days after service of notice of charges. OFHEO disagrees with this recommendation. Like the Uniform Rules, OFHEO's rule covers proceedings that arise under various statutory provisions. It is not the purpose of this rule to catalogue the requirements of all these statutes. It would also be inappropriate, and potentially misleading, to include the requirements of only one.The language of § 1780.20(d) is virtually identical to that of the Uniform Rules. That language does not negate section 1373(a)(2) of the 1992 Act any more than the Uniform Rules negate identical requirements in 12 U.S.C. 1818(b)(1), which govern cease and desist proceedings involving banks and thrifts.

Section 1780.22 Amended Pleadings

Fannie Mae recommended that certain language from the Uniform Rules be added to the second sentence in § 1780.22(b). However, OFHEO modified the language of the Uniform Rules [13] by splitting one long sentence into two sentences. No language from the Uniform Rules has been dropped in this modification. OFHEO did not intend to change the meaning of the Uniform Rules, but to clarify that the presiding officer will admit evidence freely if it will assist in the adjudication of the merits and will not prejudice an objecting party's action or defense on the merits.

Accordingly, OFHEO found it unnecessary to change the language in the proposed rule.

Section 1780.26 Discovery

Both Enterprises recommended that OFHEO modify the rule to provide for interrogatories and discovery depositions, in addition to document discovery. Freddie Mac pointed out that there is a split among the regulations of the Federal financial institution regulatory agencies on the availability of these discovery tools. Fannie Mae believes that discovery depositions of experts and factual witnesses would promote efficiency in any hearing, improve fact finding and lead to earlier resolution of complex matters.

OFHEO recognizes that some regulatory agencies allow for discovery depositions and interrogatories and some do not. The experiences of the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) and the Board of Governors of the Federal Reserve System (Board of Governors) led those agencies to find that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. However, even at those agencies, discovery depositions are limited to witnesses that have factual, direct and personal knowledge of matters at issue and expert witnesses. The Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA) determined that the interests of respondents in further pretrial disclosure were satisfied by the availability of extensive document discovery that complements the document intensive nature of those agencies' proceedings.[14]

OFHEO considered carefully the scope of discovery that would be permitted under its regulations. OFHEO has determined that broad document discovery should be permitted, but has recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings.[15] Further, the APA contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings.[16] Instead, each agency determines the extent of discovery to which a party in an administrative hearing is entitled.[17]

OFHEO's regulations strike a balance between the due process interest of respondents in obtaining pretrial disclosure, including discovery depositions, and OFHEO's need for swift adjudication while preserving its limited resources. Further, OFHEO believes that, like the FDIC and the NCUA, its enforcement actions generally would be document-intensive and that respondents could, therefore, obtain sufficient discovery through document requests.

Section 1780.28 Document Subpoenas to Nonparties

Fannie Mae commented that § 1780.28(a)(3) gives too much discretion to the presiding officer to refuse to issue or to modify a document subpoena. That provision governs applications for subpoenas that do not set forth a valid basis for the issuance of a subpoena or that request subpoenas with terms that are unreasonable, oppressive, excessive in scope, or unduly burdensome. If presented with such an application, the presiding

[12] *See* 12 CFR 19.18(b)(2).

[13] *See* 12 CFR 19.20(b).

[14] *See* 56 FR 37969, Aug. 9, 1991.

[15] *Sims* v. *National Transportation Safety Board,* 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *N.L.R.B.,* 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm.,* 549 F.2d 28, 33 (7th Cir. 1977).

[16] *Kenwich Petrochemicals, Inc.* v. *N.L.R.B.,* 893 F.2d 1468, 1484 (3d Cir. 1990); *N.L.R.B.* v. *Valley Mold Co., Inc.,* 503 F.2d 693, 695 (6th Cir. 1976); *Frillette* v. *Kimberlin,* 508 F.2d 205 (3d Cir. 1974) *cert. denied,* 421 U.S. 980 (1975).

[17] McClelland v. *Andrus,* 606 F.2d 1278, 1285 (D.C. Cir. 1979).

officer may refuse to issue the subpoena or may issue it in a modified form upon such conditions ''as may be determined by the presiding officer.'' Fannie Mae preferred the language of the Uniform Rules, which is virtually identical except that, in lieu of the quoted language, they state ''as may be consistent with the Uniform Rules.'' In a subsequent telephone conversation initiated by OFHEO to seek clarification of this comment, Fannie Mae explained that it hoped that OFHEO rules could go farther than the Uniform Rules and provide more specific standards governing the modification of or refusal to issue subpoenas.

OFHEO declines to modify the language. Although OFHEO does not intend any meaning different from the Uniform Rules, OFHEO does not find a general reference to the practice and procedure rules to be helpful. Any ruling by the presiding officer should be consistent with the practice and procedure rules. The wording chosen by OFHEO clarifies that the presiding officer has discretion under the rule to make modifications to a subpoena and to place conditions upon its issuance. The language in the rule does not grant unlimited discretion to the presiding officer, but conditions action upon a determination that no valid basis for the subpoena has been set forth or that the terms of the subpoena are unreasonable, oppressive, excessive in scope or unduly burdensome. To OFHEO's knowledge this language has not led to unreasonable suppression of discovery requests in hearings conducted by other Federal financial institution regulatory agencies. For these reasons, OFHEO sees no need to add additional conditions or requirements to guide the rulings of presiding officers.

Section 1780.30 Interlocutory Review

Fannie Mae commented that the sentence in § 1780.30(c) that expressly allows the presiding officer to indicate an opinion about the appropriateness of interlocutory review is highly prejudicial. Fannie Mae stated that it is equivalent to allowing a trial court to express an opinion to an appellate court on the arguments of a party that brings an interlocutory appeal during a trial. Fannie Mae asserted that the Federal financial institution regulatory agencies and HUD do not allow presiding officers to comment upon the appropriateness of interlocutory review.

OFHEO finds nothing prejudicial about allowing the presiding officer to comment upon whether a motion for interlocutory appeal meets the standards for such review. Except in a very narrow class of interlocutory appeals,[18] interlocutory appeals are available in the Federal courts (and most State courts): (1) only at the discretion of the appellate court and (2) *only* if the trial judge is of the opinion that such an appeal is appropriate[19] and so certifies in an order.[20] The purpose of this requirement is to prevent piecemeal review of actions. OFHEO's rules do not go this far, but merely allow the presiding officer to opine as to whether an interlocutory appeal is appropriate. Unlike in the Federal courts, parties are free to request interlocutory review even if the presiding officer believes the review would not be appropriate.

OFHEO disagrees with Fannie Mae's view that the Uniform Rules prohibit an administrative law judge from opining upon the appropriateness of a motion for interlocutory review. Nothing in those rules can be read to prohibit such an opinion. As in OFHEO's rules, under the Uniform Rules, parties file their motions and responses for interlocutory review with the ALJ, who ''refers'' them to the agency head. The ALJ may use this referral as an opportunity to state views upon whether particular issues merit that review.

It is important to distinguish between the presiding officer's opining on the appealability of a matter and opining on its merits. Parties seeking interlocutory review are appealing from a matter on which the presiding officer has ruled and, presumably, placed an opinion on the record. Section 1780.30(c) provides the Director discretion to consider the matter prior to the review of the entire hearing if (1) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion, (2) immediate review of the ruling may materially advance the ultimate termination of the proceeding, (3) subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy, or (4) subsequent modification of the ruling would cause unusual delay or expense. The presiding official is in an excellent position to advise the Director on whether these grounds for interlocutory review are met and it is no more prejudicial to allow him to express an opinion than for judges in the courts to do so. The fact that a presiding officer has decided an issue against a particular party does not mean that the presiding officer will feel that the issue does not warrant interlocutory review. Where a novel legal issue is involved or a final decision on the matter could clearly expedite the resolution of the entire case, the presiding officer could have a strong interest in supporting interlocutory review.

Fannie Mae also requested that the text of § 1780.30(c) be clarified to indicate that a party opposing a motion for interlocutory review may file a response to such a motion. In OFHEO's view, such clarification is unnecessary, because § 1780.25(d), which governs motions generally, applies. Section 1780.25(d) provides for responses to all motions, except as otherwise provided. Section 1780.30 does not contain an exception to § 1780.25(d).

Section 1780.50 Conduct of Hearings

Freddie Mac commented that OFHEO should include a reference to either the 1992 Act or, more generally, to applicable law in the rules for conduct of hearings in § 1780.50. Freddie Mac observed that laws other than the APA may govern the conduct of hearings under the rules.

OFHEO concurs with this comment and has therefore added a reference to ''other applicable law'' at § 1780.50(a).

Subpart D—General Comments

Both Enterprises provided detailed comments regarding subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight. This subpart contains rules governing practice by parties or their representatives before OFHEO. These rules include sanctions that may be imposed in the course of an adjudicatory proceeding and censure, suspension, and disbarment proceedings that may be brought against individual practitioners.

Fannie Mae recognized and supported OFHEO's need to conduct orderly hearings on the record. However, Fannie Mae felt that most of the provisions of subpart D are outside the scope of OFHEO's authority to conduct orderly hearings on the record. In addition, Fannie Mae commented that many provisions were vague and confusing and that OFHEO had not provided any ''legal explanation'' for this subpart. For these reasons, Fannie Mae believes that subpart D ''is fraught with potential for abuse and misunderstanding.'' Fannie Mae requested that OFHEO clarify the scope of the subpart's applicability, provide specific definitions for certain unspecified terms in the subpart and provide an analysis of the statutory justification for the provisions in the subpart, in particular those that do not relate to enforcement proceedings under the 1992 Act. Fannie Mae believed that ''virtually any conduct'' could be characterized by a presiding officer as

[18] 28 U.S.C. 1292(a).

[19] 28 U.S.C. 1292(b).

[20] Fed. R. Civ. P. 5(a).

''contemptuous'' and that a presiding officer could find any sanction ''appropriate'' under this regulation.

Freddie Mac stated that the presiding officer must be able to maintain order to accomplish the purposes of an adjudicatory hearing and related proceedings. Freddie Mac agreed with the subpart in the sense that the existence of sanctions would be helpful to accomplishing those purposes. However, Freddie Mac stated that the scope of the subpart should be limited to adjudicatory hearings and related proceedings and to conduct by the parties and their representatives in those hearings. Freddie Mac also recommended that lack of competence be eliminated as a ground for sanctions and that the definition of ''practice before OFHEO'' be deleted.

Fannie Mae's comment suggests that OFHEO may lack authority to issue rules governing practice beyond those necessary to control the conduct of adjudicatory proceedings. OFHEO disagrees. OFHEO has an interest in ensuring that individuals that it permits to represent the interests of others before it can do so ethically and competently. The authority to do so is incident to the authority of any agency to control its internal operations, to insure that issues that must be resolved by the agency are presented competently, that facts and law are represented accurately, and that persons purporting to represent others have appropriate authority. Further, OFHEO has chosen to allow persons to practice before it who are not attorneys or other licensed professionals subject to professional codes of conduct. Particularly as to such individuals, who could not be referred to a licensing authority for sanctions, OFHEO needs a means to ensure that their conduct and competence meets normal professional standards.

OFHEO does not share the view of the Enterprises that the rules of practice are too vague and too broad. OFHEO based its rules of practice on those of the other Federal financial institution regulatory agencies. Sections 1780.72 and 1780.73, which govern appearance and practice in adjudicatory proceedings and conflicts of interest, are modeled upon the Uniform Rules. The Enterprises raised no objection to these sections. However, the Uniform Rules do not address expressly the subjects of sanctions ordered in the course of a hearing or of censure, suspension and disbarment. Each of the Federal financial institution regulatory agencies that is subject to the Uniform Rules found it necessary to address these subjects in separate Local Rules. Most of these rules are similar to §§ 1780.74 and 1780.75 of OFHEO's rules of practice.[21] Likewise, the Local Rules of most of these regulators define the term ''practice,'' which OFHEO defines at § 1780.71.[22]

Although it is difficult to draw bright lines to describe what conduct is contemptuous and what level of competence is sufficient, OFHEO believes that the rule provides sufficient guidance in these areas. If it should be necessary to impose sanctions under subpart D, OFHEO will look to case law and the practices of other Federal agencies, as well as any of OFHEO's own precedents that may exist, in determining the appropriateness of particular sanctions.

Section 1780.70 Scope

Freddie Mac recommended that OFHEO limit the scope of subpart D to practice in adjudicatory proceedings. Fannie Mae likewise commented that parts of subpart D are outside the scope of OFHEO's authority to conduct orderly hearings on the record. Freddie Mac suggested deleting the phrase ''any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities'' in describing the scope of the subpart. Freddie Mac also commented that the rules lack a bright line to determine what matters are covered by subpart D.

OFHEO disagrees that its rules of practice should be more limited. The quoted language is typical of that used by other Federal financial institution regulatory agencies to describe the scope of their practice rules.[23] OFHEO chose the language in recognition of the fact that counsel and other professionals frequently represent clients before regulatory agencies in numerous types of matters. These matters include rulemakings, investigations, and review of executive compensation matters. OFHEO has an interest in insuring that the individuals with whom it deals on such matters, in addition to formal adjudications, meet minimal professional standards of competency and conduct. Moreover, the conduct of individuals in these other types of proceedings is relevant to their fitness to practice before OFHEO in formal adjudications. Accordingly, OFHEO has not changed the scope of subpart D. Although a ''bright line'' test, such as limiting the scope to adjudications, might be simpler to administer, it would be, in OFHEO's view, too narrow and rigid. Therefore, OFHEO prefers to define the scope more broadly, to encompass various types of matters and various types of representation.

Section 1780.71 Definitions

Freddie Mac stated that ''the expansive definition of 'practice before OFHEO' contained in Subpart D * * * is unclear.'' This statement was made in the context of Freddie Mac's broader comment that the scope of subpart D is overbroad and unclear and that the NPR ''fails to address the potential problems that this expanded scope is best suited to address.'' Freddie Mac suggested that OFHEO may seek to test every presenter for the presence of adequate qualifications or subject every presenter to potential sanctions based upon his character. Freddie Mac states that such a process ''would serve no useful purpose and could tend to impair what has been an open cooperative working relationship between Freddie Mac and OFHEO.''

OFHEO likewise seeks open, cooperative working relationships with the Enterprises, but does not interpret subpart D in a way that would impair such relationships. It is not OFHEO's intention to require everyone who conducts a presentation to OFHEO personnel to demonstrate adequate qualifications. Rather, OFHEO intends to apply its practice regulations in a manner similar to the practices of other Federal financial institution regulatory agencies. Accordingly, OFHEO has made no changes to § 1780.71.

Section 1780.74 Sanctions

Fannie Mae stated that the conduct and sanctions specified in proposed § 1780.75(g) appeared redundant to similar conduct and sanctions in proposed § 1780.74. The provisions are not intended to be redundant. Proposed § 1780.75(g) specified that representatives or individuals representing themselves who engage in contemptuous conduct could be summarily suspended from a proceeding or subjected to any other appropriate sanction. By contrast, proposed § 1780.74 provided for sanctions that would be imposed after a hearing. However, OFHEO found that the two provisions were better placed in the same section, because they dealt with sanctions imposed by a presiding

[21] Rules of practice for these agencies are found at 12 CFR 19.190–19.201 (OCC); 12 CFR 263.90–263.99 (Board of Governors); 12 CRF 308.108–308.109 (FDIC); 12 CFR 513.1–513.7 (OTS); 12 CFR 747.302 (NCUA—limited to certain suspension and prohibition proceedings).

[22] 12 CFR 19.191(a) (OCC); 12 CFR 263.92(b)(1) (Board of Governors); 12 CFR 308.109(e) (FDIC); 12 CFR 513.2(e) (OTS). NCUA does not define ''practice'' in its regulations.

[23] See 12 CFR 19.190 (OCC); 12 CFR 263.90, 253.92(b)(1) (Board of Governors); 12 CFR 513.1 (OTS).

officer during the course of an adjudicatory proceeding. Therefore, in response to the comment, OFHEO has clarified the purposes of the two provisions by combining them, incorporating the language from § 1780.75(g) into §§ 1780.74(a)(1) and 1780.74(d).

Fannie Mae recommended that the summary procedure be eliminated altogether and Freddie Mac recommended that any summary sanction occur only after a written finding by the presiding officer that the particular sanction is necessary. OFHEO believes that the authority to expel individuals summarily from a hearing is inherent in and necessary to the role and duties of presiding officer. Contemptuous conduct may undermine the ability of the presiding officer to conduct a hearing. To be effective, a presiding officer must have the ability to sanction immediately anyone who engages in such conduct. Section 1780.74(d), therefore, makes explicit an authority that is implicit in any event. Requiring prior written findings by a presiding officer is inconsistent with this type of authority, because these sanctions ordinarily would be imposed immediately upon the occurrence of the contemptuous conduct. Moreover, written findings may be unnecessary because hearings ordinarily would be transcribed.

Section 1780.75 Censure, Suspension, Disbarment and Reinstatement

Freddie Mac recommended that OFHEO eliminate character and incompetence as grounds for censure, suspension or disbarment. Freddie Mac commented further that OFHEO should limit the scope of § 1780.75 to adjudicatory hearings and related proceedings and to conduct by the parties and their representatives in those hearings. Freddie Mac explained:

> As drafted, § 1780.75 of the Proposed Rules would provide for censure, suspension or disbarment of an individual based on a wide variety of failings or prior conduct without any showing that the underlying failing or conduct had resulted in, or would be likely to result in, any adverse impact to an OFHEO adjudicatory hearing or related proceeding. As such, it goes well beyond the disciplinary authority that is a necessary incident to the authority to conduct adjudicatory hearings and related proceedings (unnecessary sanctions are simply punishment), and the exercise of that authority would likely create a substantial burden [on] the proceedings and OFHEO.

OFHEO disagrees with Freddie Mac that character and prior conduct of an individual is not relevant to that person's fitness to practice. OFHEO has a major interest in ensuring that individuals who represent others before it are honest and competent and have proper authority. Moreover, as explained above, ''practice'' before OFHEO encompasses more than appearances in adjudicatory proceedings. OFHEO can see no reason to limit sanctions to conduct that impacts a specific adjudicatory proceeding, as suggested by Freddie Mac. OFHEO should not be required to review the same issues each time an individual whose conduct warrants a suspension or disbarment appears. For these reasons, OFHEO has chosen the approach of most other Federal financial institution regulatory agencies and adopted a procedure that allows persons who appear before OFHEO to be censured, suspended or disbarred.

Freddie Mac agreed with OFHEO that individuals appearing in an adjudicatory hearing or related proceedings should be competent. However Freddie Mac recommended that OFHEO rely upon the qualifications requirements in § 1780.72 to ensure competency, rather than allowing incompetent representatives to be sanctioned. OFHEO has not accepted this recommendation, because that section provides no effective means to regulate the competence of individuals who appear. Section 1780.72 is intended primarily to ensure that individuals purporting to represent other persons before OFHEO have the requisite authority. It includes no requirement that representatives be competent nor any means to deal with representatives who are incompetent.

Freddie Mac also argues that sanctions such as censure, suspension and disbarment ''could effectively impose punishment beyond that authorized by Congress for [violations of an Enterprise charter, the 1992 Act or any other law or regulation governing Enterprise operations].'' According to Freddie Mac, because Congress gave OFHEO authority to bring civil money penalties only against directors and executive officers, OFHEO lacks authority to levy sanctions upon other individuals. Under this theory, preventing an individual from practice before OFHEO amounts to ''severe substantive punishment'' that goes beyond actions necessary to control a particular hearing.

OFHEO disagrees with this interpretation of the 1992 Act. Incident to the authority to manage its operations, any Federal agency has the inherent authority to regulate reasonably the authority, qualifications and competence of individuals who represent other persons before the agency. As to adjudicatory proceedings involving individuals representing themselves, the authority to maintain order and integrity in those proceedings is inherent in the agency and the presiding officer. This authority necessarily includes the authority to levy appropriate sanctions. There is no legal basis to assert that these authorities may only be used on a case by case basis. If the evidence is sufficient to convince the Director that an individual should be suspended from practice for a period of time or disbarred permanently from appearing before OFHEO, the Director has the same inherent authority to prevent that individual from practicing before OFHEO on future matters as to suspend the individual from a current proceeding.

III. Synopsis of the Final Rule

The 1992 Act [24] requires OFHEO to conduct its hearings pertaining to cease-and-desist orders and civil money penalties in accordance with the APA.[25] Thus, the rules of practice and procedure supplement the APA provisions governing agency adjudications and include provisions unique to OFHEO's mission. These rules apply not only to enforcement hearings, but also to any other adjudication required by statute to be determined by the Director on the record after opportunity for hearing.

The final rule includes provisions relating to prehearing procedures and activities, the conduct of the hearing itself, and the qualifications and disciplinary rules for practice before OFHEO. The rule establishes that hearings are open to the public unless the Director determines that a public hearing would be contrary to the public interest. The disciplinary rules of practice in subpart D apply not only to adjudicatory hearings under the APA, but also to all matters that involve representation of others before OFHEO. The rules also define important terms and describe the authority of the Director and the presiding officer.

Under subparts A, B, and C of this part, the Director commences the hearing process by issuing and serving a notice of charges on a respondent. A presiding officer, appointed by the Director, presides over the course of the hearing from the time of the appointment until the presiding officer files a recommended decision and order, along with the hearing record, with the Director for a final decision. During the course of the hearing, the

[24] 1992 Act, section 1373(a)(3) (42 U.S.C. 4633(a)(3)).

[25] 5 U.S.C. 500–559.

presiding officer controls virtually all aspects of the proceeding. The presiding officer: determines the hearing schedule; presides over any prehearing conferences; rules on motions, discovery, and evidentiary issues; and ensures that the proceeding is fair, equitable, and impartial. The presiding officer does not, however, have the authority to make a ruling that disposes of the proceeding. Only the Director has the authority to dismiss the proceeding or to make a final determination of the merits of the proceeding.

Under this rule, the parties to the proceeding have the right to present evidence and witnesses at the hearing and to examine and cross-examine the witnesses. At the completion of the hearing, the parties may submit proposed findings of fact and conclusions of law and a proposed order. The presiding officer then submits the complete record to the Director for consideration and action. The record includes the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order. The record also includes all prehearing and hearing transcripts, exhibits, rulings, motions, briefs and memoranda, and all supporting papers filed in connection with the hearing. The Director shall issue a final ruling within 90 days of the date the Director serves notice on the parties that the record is complete and the case has been submitted for final decision.

Subpart D of this rule contains rules governing practice by parties or their representatives before OFHEO. This subpart addresses the imposition of sanctions by the presiding officer or the Director against parties or their representatives in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or disbarment—against individuals who appear before OFHEO in a representational capacity either in an adjudicatory proceeding under part 1780 or in any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of OFHEO are not subject to disciplinary proceedings under this subpart.

The final rule incorporates certain changes from the proposed regulation. Section 1780.1 has been modified to include, among the examples of proceedings covered by the rule, civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973. The definition of ''presiding officer'' at § 1780.3(h) has been clarified in response to a comment discussed above. Section 1780.5 has been modified to list among the express authorities of the presiding officer, the authority to issue protective orders and regulate public and media access to hearings. Section 1780.10(f) has been modified to clarify the purpose of a proof of service declaration or affidavit. Section 1780.50 was modified to clarify that hearings would be conducted not only in accordance with the APA, but also any other applicable law. Section 1780.74 was modified to incorporate the provisions of § 1780.75(g) and to clarify that the presiding officer may decide what notice and responses are appropriate where sanctions are at issue in an adjudicatory proceeding. Slight modifications were made to the language of § 1780.75(a) to clarify which individuals may be subject to sanctions under the section. Section 1780.75(g) was deleted and its provisions incorporated into § 1780.74. In addition, the final rule includes a number of minor corrections that create no substantive change in the rule.

IV. Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. ''Federalism implications'' is defined to specify regulations or actions that have substantial, direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities between Federal and State Government. OFHEO has determined that this final rule has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

OFHEO has determined that this final rule is not a significant regulatory action as such term is defined in Executive Order 12866, has so indicated to the Office of Management and Budget (OMB) and was not notified by OMB that the rule must be reviewed by OMB.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This final rule meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule does not include a Federal mandate that may result in the 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. Consequently, the final rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include a regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impacts of the rule under the Regulatory Flexibility Act. The rule does not have a significant economic impact on a substantial number of small entities, because it is applicable only to the Enterprises, which are not small entities. Therefore, OFHEO's General Counsel, acting under delegated authority, has certified that the rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that regulations involving the collection of information receive clearance from OMB. This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, OFHEO is amending 12 CFR part 1780 as follows:

PART 1780—RULES OF PRACTICE AND PROCEDURE

1. Revise the heading for part 1780 to read as set forth above.

2. Revise the authority citation for part 1780 to read as follows:

Authority: 12 U.S.C. 4513, 4631–4641.

Subpart E also issued under 28 U.S.C. 2461 *note.*

Subpart E—[Amended]

3. Redesignate §§ 1780.70 and 1780.71 as §§ 1780.80 and 1780.81, respectively.

4. Add subparts A through D to part 1780 to read as follows:

Subpart A—General Rules

Sec.
1780.1 Scope.
1780.2 Rules of construction.
1780.3 Definitions.
1780.4 Authority of the Director.
1780.5 Authority of the presiding officer.
1780.6 Public hearings.
1780.7 Good faith certification.
1780.8 Ex parte communications.
1780.9 Filing of papers.
1780.10 Service of papers.
1780.11 Computing time.
1780.12 Change of time limits.
1780.13 Witness fees and expenses.
1780.14 Opportunity for informal settlement.
1780.15 OFHEO's right to conduct examination.
1780.16 Collateral attacks on adjudicatory proceeding.

Subpart B—Prehearing Proceedings

1780.20 Commencement of proceeding and contents of notice of charges.
1780.21 Answer.
1780.22 Amended pleadings.
1780.23 Failure to appear.
1780.24 Consolidation and severance of actions.
1780.25 Motions.
1780.26 Discovery.
1780.27 Request for document discovery from parties.
1780.28 Document subpoenas to nonparties.
1780.29 Deposition of witness unavailable for hearing.
1780.30 Interlocutory review.
1780.31 Summary disposition.
1780.32 Partial summary disposition.
1780.33 Scheduling and prehearing conferences.
1780.34 Prehearing submissions.
1780.35 Hearing subpoenas.

Subpart C—Hearing and Posthearing Proceedings

1780.50 Conduct of hearings.
1780.51 Evidence.
1780.52 Post hearing filings.
1780.53 Recommended decision and filing of record.
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Subpart A—General Rules

§ 1780.1 Scope.

This subpart prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(a) Cease and desist proceedings under sections 1371 and 1373, title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4631, 4633).

(b) Civil money penalty assessment proceedings against the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), or any executive officer or director of any Enterprise under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633, 4636).

(c) Civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a.

(d) All other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided in the regulations specifically governing such an adjudication.

§ 1780.2 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 1780.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary—

(a) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation;

(b) *Decisional employee* means any member of the Director's or the presiding officer's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Director or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this subpart.

(c) *Director* means the Director of OFHEO.

(d) *Enterprise* means the Federal National Mortgage Association and any affiliate thereof and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(e) *OFHEO* means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(f) *Party* means OFHEO and any person named as a party in any notice.

(g) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, or other entity or organization.

(h) *Presiding officer* means an administrative law judge or any other person appointed by the Director under applicable law to conduct a hearing.

(i) *Representative of record* means an individual who is authorized to represent a person or is representing himself and who has filed a notice of appearance in accordance with § 1780.72.

(j) *Respondent* means any party other than OFHEO.

(k) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(l) The *1992 Act* is title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4501–4641).

§ 1780.4 Authority of the Director.

The Director may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of any act that could be done or ordered by the presiding officer.

§ 1780.5 Authority of the presiding officer.

(a) *General rule.* All proceedings governed by this subpart shall be conducted in accordance with the provisions of 5 U.S.C. chapter 5. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay and assure that a record of the proceeding is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, subpoenas *duces tecum*, and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in an adjudicatory proceeding, except that only the Director shall have the power to grant any motion to dismiss the proceeding or make a final determination of the merits of the proceeding;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse himself upon motion made by a party or on his own motion;

(14) Prepare and present to the Director a recommended decision as provided in this part;

(15) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 1780.6 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Director, in his discretion, determines that holding an open hearing would be contrary to the public interest. The Director may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within 20 days of service of the notice of charges, any party may file with the presiding officer a motion for a private hearing and any party may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Director, who shall make a final determination. Such motions and replies are governed by § 1780.25.

(c) *Filing documents under seal.* OFHEO's counsel of record, in his discretion, may file any document or part of a document under seal if such counsel makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 1780.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Director shall be signed by at least one representative of record in his individual name and shall state that representative's address and telephone number and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.

(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—

(i) The representative of record or party has read the filing or submission of record;

(ii) To the best of his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, nonfrivolous argument for the extension, modification, or reversal of existing law; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of his knowledge, information, and belief, formed after reasonable inquiry, his statements are well-grounded in fact and are warranted by existing law or a good faith, nonfrivolous argument for the extension, modification, or reversal of existing law and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 1780.8 Ex parte communications.

(a) *Definition.* (1) Ex parte communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between—

(i) An interested person outside OFHEO (including the person's representative); and

(ii) The presiding officer handling that proceeding, the Director, a decisional employee assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of an adjudicatory proceeding, such as a request for status of the proceeding, does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice commencing the proceeding is issued by the Director until the date that the Director issues his final decision pursuant to § 1780.55, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an ex parte communication. The Director, presiding officer, or a decisional employee shall not knowingly make or cause to be made an ex parte communication.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by any person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for a party who makes an ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Director or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of ex parte matters as authorized by law, the presiding officer may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for OFHEO in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Director review under § 1780.55 of the recommended decision, except as witness or counsel in public proceedings.

§ 1780.9 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

(b) *Manner of filing.* Unless otherwise specified by the Director or the presiding officer, filing shall be accomplished by:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized by and upon any conditions specified by the Director or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 1780.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of OFHEO and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Director or the presiding officer, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 1780.10 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 1780.9(c).

(c) *By the Director or the presiding officer.* (1) All papers required to be served by the Director or the presiding officer upon a party who has appeared in the proceeding in accordance with § 1780.72 shall be served by any means specified in paragraph (b) of this section.

(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with § 1780.72, the Director or the presiding officer shall make service upon the party by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party; or

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.

(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as *prima facie* evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 1780.11 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is 10 days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective—

(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon

deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing in the case of filing, and as agreed among the parties in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Director or the presiding officer in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits shall be calculated as follows:

(1) If service was made by first class, registered, or certified mail, or by delivery to the U.S. Postal Service for longer than overnight delivery service, add three calendar days to the prescribed period for the responsive filing.

(2) If service was made by U.S. Postal Service or reliable commercial overnight delivery service, add 1 calendar day to the prescribed period for the responsive filing.

(3) If service was made by electronic media transmission, add one calendar day to the prescribed period for the responsive filing, unless otherwise determined by the Director or the presiding officer in the case of filing, or by agreement among the parties in the case of service.

§ 1780.12 Change of time limits.

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or order issued in the proceedings. After the referral of the case to the Director pursuant to § 1780.53, the Director may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties, or on the Director's or the presiding officer's own motion.

§ 1780.13 Witness fees and expenses.

Witnesses (other than parties) subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where OFHEO is the party requesting the subpoena. OFHEO shall not be required to pay any fees to or expenses of any witness not subpoenaed by OFHEO.

§ 1780.14 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to OFHEO's counsel of record written offers or proposals for settlement of a proceeding without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any OFHEO representative other than OFHEO's counsel of record. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 1780.15 OFHEO's right to conduct examination.

Nothing contained in this part limits in any manner the right of OFHEO to conduct any examination, inspection, or visitation of any Enterprise or affiliate, or the right of OFHEO to conduct or continue any form of investigation authorized by law.

§ 1780.16 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

Subpart B—Prehearing Proceedings

§ 1780.20 Commencement of proceeding and contents of notice of charges.

Proceedings under this subpart are commenced by the issuance of a notice of charges by the Director, which must be served upon the respondent. Such notice shall state all of the following:

(a) The legal authority for the proceeding and for OFHEO's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that OFHEO is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) The time, place and nature of the hearing;

(e) The time within which to file an answer;

(f) The time within which to request a hearing; and

(g) The address for filing the answer and/or request for a hearing.

§ 1780.21 Answer.

(a) *When.* Unless otherwise specified by the Director in the notice, respondent shall file an answer within 20 days of service of the notice.

(b) *Content of answer.* An answer must respond specifically to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, OFHEO's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the presiding officer shall file with the Director a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Director based upon a respondent's failure to answer is deemed to be an order issued upon consent.

§ 1780.22 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer,

unless the Director or presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 1780.23 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized representative constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Director a recommended decision containing the findings and the relief sought in the notice.

§ 1780.24 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 1780.25 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the presiding officer directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the presiding officer, except that following the filing of a recommended decision, motions must be filed with the Director.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Director. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 1780.31 and 1780.32.

§ 1780.26 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs (b), (d), and (e) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term ''documents'' may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 1780.27.

(c) *Forms of discovery.* Discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories is not permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 1780.27 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must

describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by OFHEO at § 1710.22(b)(2) of this chapter for requests for documents filed under the Freedom of Information Act, 12 U.S.C. 552. The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 1780.25 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 1780.25 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer has discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 1780.25 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may, within five days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses to motions pursuant to this section has expired, the presiding officer shall rule promptly on all such motions. If the presiding officer determines that a discovery request or any of its terms calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he may deny or modify the request and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the presiding officer its intention to file a timely motion for interlocutory review of the presiding officer's order to produce the documents, until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the presiding officer issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 1780.28 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for production in response to the subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 1780.27. The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The presiding officer shall issue promptly any document subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be determined by the presiding officer.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 1780.27 and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other

aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§ 1780.29 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section to the presiding officer for the issuance of a subpoena, including a subpoena *duces tecum,* requiring the attendance of the witness at a deposition. The presiding officer may issue a deposition subpoena under this section upon a showing that—

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness, or infirmity, or will be otherwise unavailable;

(ii) The witness' unavailability was not produced or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States and its possessions and territories in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) Subpoenas must be issued promptly upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. Before making a determination that there is no valid basis for issuing the subpoena, the presiding officer shall require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than 10 days' notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its possessions or territories on any person doing business anywhere within the United States or its possessions or territories, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion under § 1780.25 with the presiding officer to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than 10 days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers and objections must be recorded.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 1780.30 Interlocutory review.

(a) *General rule.* The Director may review a ruling of the presiding officer prior to the certification of the record to the Director only in accordance with the procedures set forth in this section.

(b) *Scope of review.* The Director may exercise interlocutory review of a ruling of the presiding officer if the Director finds that—

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within ten days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Director for final disposition. In referring the matter to the Director, the presiding officer may indicate agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Director under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Director.

§ 1780.31 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Director issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in

connection with a motion for summary disposition show that—

(1) There is no genuine issue as to any material fact; and

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Director, under § 1780.53. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion.

§ 1780.32 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he shall defer submitting a recommended decision to the Director as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 1780.33 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as the parties may agree, the presiding officer shall direct representatives for all parties to meet with him in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a ''scheduling conference.'' The identification of potential witnesses, the time for and manner of discovery and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The presiding officer may, in addition to the scheduling conference, on his own motion or at the request of any party, direct representatives for the parties to meet with him (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The presiding officer, in his discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at such party's expense.

(d) *Scheduling or prehearing orders.* Within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the presiding officer shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 1780.34 Prehearing submissions.

(a) Within the time set by the presiding officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party the serving party's—

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 1780.35 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any State, commonwealth, possession, territory of the United States, or the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are

unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with this subpart. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than 10 days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 1780.28(c). A party's right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

Subpart C—Hearing and Posthearing Proceedings

§ 1780.50 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted in accordance with 5 U.S.C. chapter 5 and other applicable law and so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* OFHEO's counsel of record shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. OFHEO's counsel of record shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order or presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) *Examination of witnesses.* Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer's own motion.

§ 1780.51 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Director shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by OFHEO or by another Federal or State financial institutions regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Director.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 1780.29, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the

depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 1780.52 Post hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A posthearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) Any party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings and conclusions and proposed order are due. Reply briefs must be limited strictly to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a posthearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party's filing of its brief.

§ 1780.53 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 1780.52(b), the presiding officer shall file with and certify to the Director, for decision, the record of the proceeding. The record must include the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) *Filing of index.* At the same time the presiding officer files with and certifies to the Director, for final determination, the record of the proceeding, the presiding officer shall furnish to the Director a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 1780.54 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 1780.53, a party may file with the Director written exceptions to the presiding officer's recommended decision, recommended findings and conclusions, or proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Director if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Director on motion.

(3) One reply brief may be submitted by each party within ten days of service of exceptions and briefs in support of exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Director on motion.

§ 1780.55 Review by Director.

(a) *Notice of submission to the Director.* When the Director determines that the record in the proceeding is complete, the Director shall serve notice upon the parties that the proceeding has been submitted to the Director for final decision.

(b) *Oral argument before the Director.* Upon the initiative of the Director or on the written request of any party filed with the Director within the time for filing exceptions under § 1780.54, the Director may order and hear oral argument on the recommended findings, conclusions, decision and order of the presiding officer. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Director's final decision. Oral argument before the Director must be transcribed.

(c) *Director's final decision.* (1) Decisional employees may advise and assist the Director in the consideration and disposition of the case. The final decision of the Director will be based upon review of the entire record of the proceeding, except that the Director may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Director shall render a final decision and issue an appropriate order within 90 days after notification of the parties that the case has been submitted for final decision, unless the Director orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings. Copies of the final decision and order of the Director shall be served upon each party

to the proceeding and upon other persons required by statute.

§ 1780.56 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer's recommendations, a party must file exceptions with the Director under § 1780.54. A party must exhaust administrative remedies as a precondition to seeking judicial review of any decision issued under this subpart.

§ 1780.57 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Director may not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Director may, in his discretion and on such terms as he finds just, stay the effectiveness of all or any part of an order of the Director pending a final decision on a petition for review of that order.

Subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight

§ 1780.70 Scope.

This subpart contains rules governing practice by parties or their representatives before OFHEO.

This subpart addresses the imposition of sanctions by the presiding officer or the Director against parties or their representatives in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or disbarment—against individuals who appear before OFHEO in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of OFHEO are not subject to disciplinary proceedings under this subpart.

§ 1780.71 Definitions.

Practice before OFHEO for the purposes of this subpart, includes, but is not limited to, transacting any business with OFHEO as counsel, representative or agent for any other person, unless the Director orders otherwise. Practice before OFHEO also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with OFHEO in any certification, notification, application, report, or other document, with the consent of such counsel, representative or agent. Practice before OFHEO does not include work prepared for an Enterprise solely at the request of the Enterprise for use in the ordinary course of its business.

§ 1780.72 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before OFHEO or a presiding officer.* (1) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession, territory of the United States, or the District of Columbia and who is not currently suspended or disbarred from practice before OFHEO.

(2) *By nonattorneys.* An individual may appear on his own behalf. A member of a partnership may represent the partnership and a duly authorized officer, director, employee, or other agent of any corporation or other entity not specifically listed herein may represent such corporation or other entity; provided that such officer, director, employee, or other agent is not currently suspended or disbarred from practice before OFHEO. A duly authorized officer or employee of any Government unit, agency, or authority may represent that unit, agency, or authority.

(b) *Notice of appearance.* Any person appearing in a representative capacity on behalf of a party, including OFHEO, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraphs (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a pro se basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 1780.73 Conflicts of interest.

(a) *Conflict of interest in representation.* No representative shall represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be limited materially by that representative's responsibilities to a third person or by that representative's own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel or other representative represents two or more parties to an adjudicatory proceeding or also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 1780.72—

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 1780.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any adjudicatory proceeding;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just;

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, and after such notice and responses as may be directed by the presiding officer, may impose any sanction authorized by this section. The presiding officer shall submit to the Director for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Director from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

(d) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction.

§ 1780.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Director may censure any individual who practices or attempts to practice before OFHEO or suspend or revoke the privilege to appear or practice before OFHEO of such individual if, after notice of and opportunity for hearing in the matter, that individual is found by the Director—

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the 1992 Act, the Federal Home Loan Mortgage Corporation Act, the Federal National Mortgage Association Charter Act or the rules or regulations issued under those statutes or any other law or regulation governing Enterprise operations;

(v) To have engaged in contemptuous conduct before OFHEO;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last 10 years, to have been convicted of an offense involving moral turpitude, dishonesty or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of *nolo contendere* or on consent, regardless of whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii), (iii), (iv), (v), (vi) and (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Director for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) If the final order against the respondent is for censure, the individual may be permitted to practice before OFHEO, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in OFHEO's files.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession, territory of the United States or the District of Columbia; any accountant or other licensed expert whose license to practice has been revoked in any State, commonwealth, possession, territory of the United States or the District of Columbia; any person who has been and remains suspended or barred from practice before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Board, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before OFHEO. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before OFHEO under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) *Notices to be filed.* (1) Any individual appearing or practicing before OFHEO who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Director a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before OFHEO who is or within the last 10 years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 shall file a notice promptly with the Director. The notice shall include a copy of the order imposing the sentence or fine,

together with any related opinion or statement of the court involved.

(d) *Reinstatement.* (1) Unless otherwise ordered by the Director, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. An applicant for reinstatement under this paragraph (d)(1) may, in the Director's sole discretion, be afforded a hearing.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than 1 year after the applicant's most recent application. An applicant for reinstatement for good cause under this paragraph (d)(2) may, in the Director's sole discretion, be afforded a hearing. However, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated by OFHEO upon written application notifying OFHEO that the grounds have been removed.

(e) *Conferences.* (1) *General.* Counsel for OFHEO may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, disbarment or suspension, regardless of whether a proceeding for censure, disbarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(2) *Resignation or voluntary suspension.* In order to avoid the institution of or a decision in a disbarment or suspension proceeding, a person who practices before OFHEO may consent to censure, suspension or disbarment from practice. At the discretion of the Director, the individual may be censured, suspended or disbarred in accordance with the consent offered.

(f) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this part, provided that in proceedings to terminate an existing OFHEO suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof and that the Director may, in the Director's sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by OFHEO be limited to written submissions. All hearings held under this section shall be closed to the public unless the Director, on the Director's own motion or upon the request of a party, otherwise directs.

Dated: December 21, 1999.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 99–33461 Filed 12–27–99; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–331–AD; Amendment 39–11454; AD 99–25–11]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 series airplanes and certain British Aerospace Model Avro 146–RJ series airplanes, that requires repetitive eddy current inspections to detect fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil aviation authority. The actions specified by this AD are intended to detect and correct fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall, which could result in premature extension of the nose landing gear or depressurization of the airplane.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 series airplanes and certain British Aerospace Model Avro 146–RJ series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34586). That action proposed to require repetitive eddy current inspections to detect fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall; and corrective action, if necessary.

Comments

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

Request To Change the Statement of Unsafe Condition

One commenter states that the description of the unsafe condition, as stated in the notice of proposed rulemaking (NPRM), is incorrect. The commenter requests that, instead of stating ''such fatigue cracking, if not corrected, could result in failure of the nose landing gear during take-off and landing,'' the consequence of such fatigue cracking should be stated as ''premature extension of the nose landing gear and/or * * * a depressurization of the aircraft.''

The FAA concurs with the commenter's request. Therefore, the statement of unsafe condition has been revised in the summary and the body of the final rule to correctly state the unsafe condition.

Request To Allow Contact of Manufacturer if Cracks Are Found

One commenter requests that the final rule be revised to state, ''If cracks are found, before further flight[,] either[;]

contact BAe Customer Support for further advice or repair in accordance with a method approved by the FAA.'' The commenter states that the proposed requirement for repair prior to further flight in accordance with a method approved by the FAA or Civil Aviation Authority (CAA), is too restrictive and could force operators to ground airplanes with cracks along the face of the retraction attachment boss in the nose landing gear sidewall, regardless of crack length. The commenter states that it has demonstrated by test that ultimate loads can be sustained if a crack has extended to the edge of the retraction attachment boss.

The FAA does not concur with the commenter's request. To require operators to contact the manufacturer for repair instructions, as suggested by the commenter, would be delegating the FAA's rulemaking authority to the manufacturer. In addition, because specific repair instructions were not included in the referenced service bulletin and have not been provided to the FAA by the manufacturer, the FAA cannot include specific repair instructions in the final rule. Also, although the manufacturer has advised that it plans to revise the service bulletin to include repair instructions, the FAA does not consider it appropriate to delay issuance of the final rule while awaiting the revised service bulletin.

However, the FAA recognizes that the requirement to repair any crack prior to further flight, regardless of the length of the crack, could be, in this case, unnecessarily restrictive. As stated by the commenter, tests have shown that cracked structure within defined limits can sustain limit loads without failure. Thus, the FAA finds that a stringent repetitive inspection program, acceptable to the FAA or CAA, may provide an acceptable level of safety that would allow for deferment of a permanent repair for a certain period of time. Because the manufacturer has not provided the FAA with such a repetitive inspection program nor criteria to allow a temporary deferral of permanent repair, such instructions cannot be included in the final rule. However, to allow for the possibility of a temporary deferral of repair, paragraph (b) of this final rule has been revised to require, if any crack is detected, repair or reinspection prior to further flight in accordance with a method approved by the FAA or CAA.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry will be affected by this required AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $2,640, or $60 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–25–11 **British Aerospace Regional Aircraft** (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–11454. Docket 98–NM–331–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, as listed in British Aerospace Service Bulletin SB.53–152, dated October 8, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct fatigue cracking along the face of the retraction attachment boss in the nose landing gear sidewall, which could result in premature extension of the nose landing gear or result in depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Prior to the accumulation of 8,000 total flight cycles, or within 200 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking along the face of the retraction attachment boss in the nose landing gear sidewall, in accordance with British Aerospace Service Bulletin SB.53–152, dated October 8, 1998. Thereafter, repeat the eddy current inspection at intervals not to exceed 2,600 flight cycles.

Repair

(b) If any crack is detected, prior to further flight, repair or reinspect in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as

required by this paragraph, the Manager's approval letter must specifically reference this AD.

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 2: 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.

Incorporation by Reference

(e) The inspections shall be done in accordance with British Aerospace Service Bulletin SB.53–152, dated October 8, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 015–10–98.

(f) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 1, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31676 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–13–AD; Amendment 39–11479; AD 99–26–19]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. J–2 Series Airplanes That Are Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) J–2 series airplanes equipped with wing lift struts. This AD requires repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. This AD also requires incorporating a ''NO STEP'' placard on the lift strut. This AD is the result of the Federal Aviation Administration (FAA) inadvertently omitting the J–2 series airplanes from the applicability of AD 99–01–05. The actions specified by this AD are intended to prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane.

DATES: Effective February 14, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the F. Atlee Dodge supplemental type certificate (STC) may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen Aircraft, Inc., 9225 County Road 140, Salida, Colorado 81201. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper J–2 series airplanes of the same type design that are equipped with wing lift struts was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 12, 1999 (64 FR 37465). The NPRM proposed to require repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. The NPRM also proposed to require installing a placard on the lift strut, and would provide the option of installing certain wing lift strut and wing lift strut fork assemblies, as terminating action for repetitive inspection and replacement requirements. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Piper Service bulletin No. 528D, dated October 19,1990.

The NPRM was the result of the Federal Aviation Administration (FAA) inadvertently omitting the J–2 series airplanes from the applicability of AD 99–01–05.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

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

Cost Impact

The FAA estimates that 91 airplanes in the U.S. registry will be affected by this AD.

It will take approximately 8 workhours per airplane to accomplish the initial inspection, and the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $43,680, or $480 per airplane. These figures are based only on the cost of the initial inspection and do not take into account the costs of any repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator will incur over the life of the airplane.

It will take approximately 4 workhours per airplane to accomplish the initial wing lift strut fork replacements, and the average labor rate is approximately $60 an hour. Fork assemblies cost approximately $110 each and four are required for each airplane. Based on these figures, the total cost impact of the initial wing lift strut fork replacements on U.S. operators is estimated to be $61,880, or $680 per airplane.

Airplane operators who do not incorporate the improved design wing lift strut assemblies will have to repetitively replace the wing lift strut forks. The FAA has no way of determining how many airplanes do not have the improved design wing lift strut assemblies installed and will need repetitive strut fork replacements.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–19 The New Piper Aircraft, Inc.: Amendment 39–11479; Docket No. 99–CE–13–AD.

Applicability: J–2 series airplanes, serial numbers 500 through 1975, certificated in any category; that are equipped with wing lift struts.

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 (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 in the body of this AD, unless already accomplished.

To prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), *etc.*
Level 2: (1), (2), (3), *etc.*
Level 3: (i), (ii), (iii), *etc.*
Level 4: (A), (B), (C), *etc.*

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) Within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished per AD 93–10–06, whichever occurs later, remove the wing lift struts in accordance with Piper Service Bulletin (SB) No. 528D, and accomplish one of the following (the actions in either paragraph (a)(1), (a)(2), (a)(3), or (a)(4), including subparagraphs, of this AD):

(1) Inspect the wing lift struts for perceptible dents (as defined in the service bulletin referenced below) and corrosion in accordance with the ''INSTRUCTIONS'' section in part I of Piper SB No. 528D, dated October 19, 1990.

(i) If no perceptible dents are found in the wing lift strut and no corrosion is externally visible, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If a perceptible dent is found in the wing lift strut or external corrosion is found, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraph (a)(3) or (a)(4) of this AD.

(2) Inspect the wing lift struts for corrosion in accordance with the Appendix to this AD. The inspection procedures in this Appendix must be accomplished by a Level 2 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410.

(i) If no corrosion is found that is externally visible and all requirements in the Appendix to this AD are met, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If external corrosion is found or if any of the requirements in the Appendix of this AD are not met, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraph (a)(3) or (a)(4) of this AD.

(3) Install original equipment manufacturer (OEM) part number wing struts (or FAA-approved equivalent part numbers) that have been inspected in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD, and are found to be airworthy according to the inspection requirements included in these paragraphs. Thereafter, inspect these wing lift struts at intervals not to exceed 24 calendar months in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD.

(4) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in part II of the above-referenced SB. These sealed wing lift strut assemblies also include the wing lift strut forks. Installation of these assemblies constitutes terminating action for the inspection and replacement requirements of both paragraphs (a) and (b) of this AD.

(b) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within 500 hours TIS after the last inspection, whichever is later, remove the wing lift strut forks and accomplish one of the following (the actions in either paragraph (b)(1), (b)(2) or (b)(3); including subparagraphs, of this AD):

(1) Inspect the wing lift strut forks for cracks using FAA-approved magnetic particle procedures.

(i) If no cracks are found, reinspect at intervals not to exceed 500 hours TIS provided that the replacement requirements of paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C) of this AD have been met.

(ii) Replace the wing lift strut forks at whichever of the following is applicable:

(A) *If cracks are found on any wing lift strut fork:* Prior to further flight;

(B) *If the airplane is equipped with floats or has been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 1,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; or

(C) *If the airplane has not been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 2,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.

(iii) Replacement parts shall be of the same part numbers of the existing part (or FAA-approved equivalent part numbers) and shall be manufactured with rolled threads. Lift strut forks manufactured with machined (cut) threads shall not be utilized.

(iv) The 500-hour TIS interval repetitive inspections are still required when the above replacements are accomplished.

(2) Install new OEM part number wing lift strut forks (or FAA-approved equivalent part numbers). Reinspect and replace these wing lift strut forks at the intervals specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), including all subparagraphs, of this AD.

(3) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in part II of the above-referenced SB.

(i) This installation may have ''already been accomplished'' through the actions specified in paragraph (a)(4) of this AD.

(ii) No repetitive inspections are required after installing these sealed wing lift strut assemblies.

(c) If holes are drilled in wing lift strut assemblies installed in accordance with (a)(4) or (b)(3) of this AD to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in paragraph (a)(1) or (a)(2), including all subparagraphs, of this AD.

(d) Within 1 calendar month after the effective date of this AD and thereafter prior to further flight after the installation of any lift strut assembly, accomplish one of the following:

(1) Install ''NO STEP'' decal, Piper part number (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft; or

(2) Paint the statement ''NO STEP'' approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft. Use a minimum of 1-inch letters utilizing a color that contrasts with the color of the airplane.

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

(f) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(g) The removals, inspections, modifications, and installations required by this AD shall be done in accordance with Piper Service Bulletin No. 528D, dated October 19, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Appendix to Docket No. 99–CE–13–AD—Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to accomplish this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of +/−0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch, and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

• **Note:** Couplant is defined as ''a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface.''

• **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

Instrument Setup

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the **Equipment Requirements.** Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to ''ring'' the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. ''Ring'' the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and ''ring'' the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/−0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

Inspection Procedure

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the **Equipment Requirements** section.

2. Using a flexible ruler, draw a ¼-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D or 910A, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every ¼-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first ¼-inch mark on the ruler and ''ring'' the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at ¼-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

• **Note:** A reading shall not exceed .041-inch. If a reading exceeds .041-inch, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

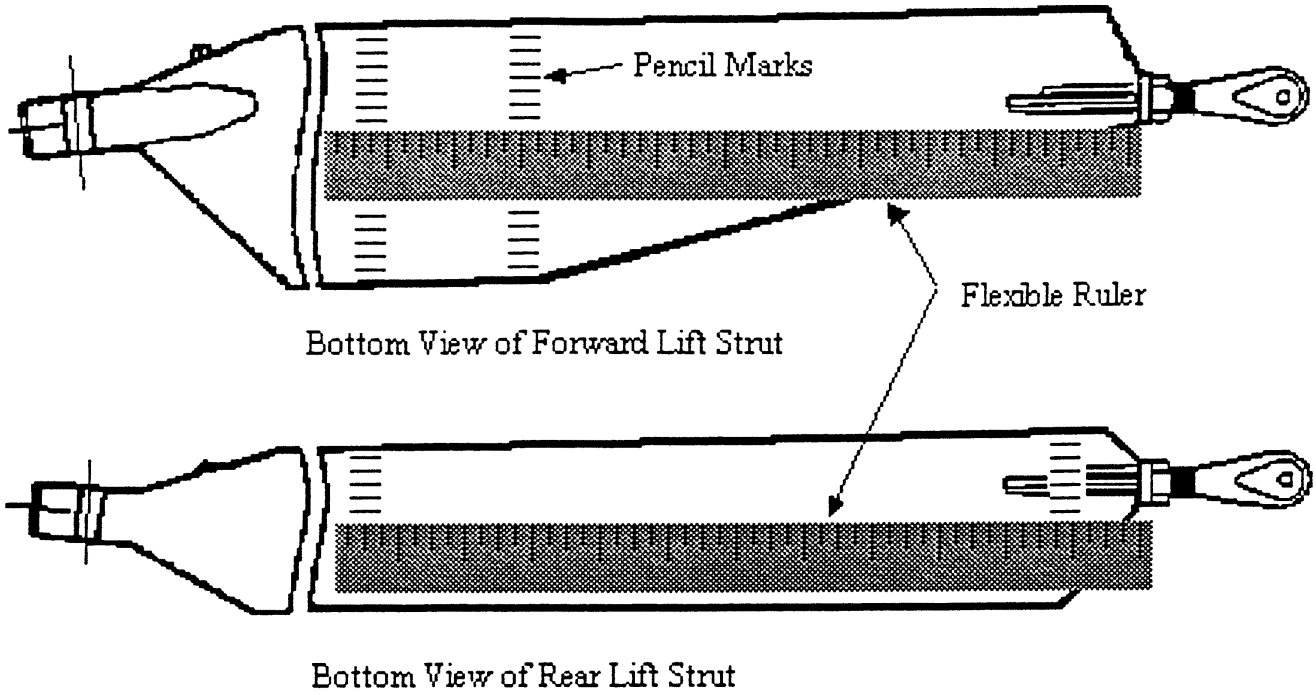
7. In areas where obstructions are present, take a data point as close to the correct area as possible.

• **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule ''Fabric Tester'' as specified in Piper Service Bulletin No. 528D or 910A.

10. Record the lift strut inspection in the aircraft log book.



(h) This amendment becomes effective on February 14, 2000.

Issued in Kansas City, Missouri, on December 16, 1999.

James Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33166 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–166–AD; Amendment 39–11476; AD 99–26–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes, that requires, for certain airplanes, removing the hydraulic tube assemblies from the main landing gear (MLG) bay, installing new re-routed hydraulic tube assemblies, and repositioning a fuel line, as applicable. For certain other airplanes, this amendment requires a general visual inspection to determine the routing of certain hydraulic and fuel lines, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent damage to hydraulic and fuel lines resulting from failure of an MLG, which could cause a fire in the MLG wheel well.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes was published in the **Federal Register** on October 27, 1999 (64 FR 57798). For certain airplanes, that action proposed to require removing the hydraulic tube assemblies from the main landing gear (MLG) bay, installing new re-routed hydraulic tube assemblies, and repositioning a fuel line, as applicable. For certain other airplanes, that action proposed to require a general visual inspection to determine the routing of certain hydraulic and fuel lines, and repair, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 249 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that 231 Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) series airplanes will be affected by this proposed AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $277,200, or $1,200 per airplane.

The FAA estimates that 18 Model CL–600–2B16 (CL–604) series airplanes will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $1,080, or $60 per airplane.

The cost impact figures discussed above are 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 adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–16 **Bombardier, Inc.** (Formerly Canadair): Amendment 39–11476. Docket 99–NM–166–AD.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes, serial numbers 5001 through 5194 inclusive, and 5301 through 5317 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 damage to hydraulic and fuel lines resulting from failure of a main landing gear (MLG), which could cause a fire in the MLG wheel well, accomplish the following:

Inspection and Modification

(a) Within 300 landings or 12 months after the effective date of this AD, whichever occurs first, accomplish the actions in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model CL–600–1A11 (CL–600) series airplanes: Remove the five existing hydraulic tube assemblies from the MLG bay, install six new re-routed hydraulic tube assemblies, and reposition a fuel line, in accordance with Bombardier Service Bulletin 600–0671, dated August 4, 1997.

(2) For Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and –3R) series airplanes: Remove the five existing hydraulic tube assemblies from the MLG bay, and install six new re-routed hydraulic tube assemblies, in accordance with Bombardier Service Bulletin 601–0482, dated April 15, 1997.

(3) For Model CL–600–2B16 (CL–604) series airplanes: Perform a general visual inspection of the routing of the hydraulic and fuel lines in the MLG bay in accordance with Bombardier Service Bulletin 604–29–001, dated December 20, 1996.

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.''

(i) If all hydraulic lines are routed in accordance with the service bulletin, no further action is required by this paragraph.

(ii) If any hydraulic line is not routed in accordance with the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

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, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Incorporation by Reference

(d) Except as provided in paragraph (a)(3)(ii), the actions shall be done in accordance with Bombardier Service Bulletin 600–0671, dated August 4, 1997; Bombardier Service Bulletin 601–0482, dated April 15, 1997; and Bombardier Service Bulletin 604–29–001, dated December 20, 1996, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue,

SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–99–14, dated May 7, 1999.

(e) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 16, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33168 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–201–AD; Amendment 39–11477; AD 99–26–17]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs. Damage to system wiring or contamination of the electrical connectors or plugs could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on October 26, 1999 (64 FR 57600). That action proposed to require modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 56 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $33,600, or $3,360 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–17 **British Aerospace Regional Aircraft** [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11477. Docket 99–NM–201–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs; which could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout, accomplish the following:

Modification

(a) Within 180 days after the effective date of this AD, accomplish the modification of the engine intake ducts (including inspection of the cable looms, wires, electrical connectors, and associated hardware for damage; replacement of damaged parts with new or serviceable parts; rerouting and modification of the flexible duct cable loom and inlet duct power loom; and installation of new connector boots and backshells on electrical connectors on the engine intake de-icing system) to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system, in accordance with British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999.

Note 2: British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999, references Dunlop Limited Aviation Division Service Bulletin ACA1324–30–96, dated June 11, 1999, as an additional source of service information to accomplish the modification.

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.

Incorporation by Reference

(d) The modification shall be done in accordance with British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 007–06–99.

(e) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 17, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33288 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–302–AD; Amendment 39–11478; AD 99–26–18]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that requires repetitive inspections to detect loose or migrated levers of the elevator cable tension regulators, and replacement of the regulator assembly with a new assembly, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct loose or migrated regulator levers of the elevator cable tension regulators, which could result in reduced controllability of the airplane.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on October 19, 1999 (64 FR 56281). That action proposed to require repetitive inspections to detect loose or migrated levers of the elevator cable tension regulators, and replacement of the regulator assembly with a new assembly, if necessary.

Comments

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

Change Made to the Final Rule

Note 4 of the final rule has been added to include British airworthiness directive 005–09–99, which the Civil Aviation Authority issued in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

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

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,840, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–18 **British Aerospace Regional Aircraft** [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11478. Docket 99–NM–302–AD.

Applicability: Model Jetstream 4101 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 (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 detect and correct loose or migrated regulator levers of the elevator cable tension regulators, which could result in reduced controllability of the associated elevator, accomplish the following:

(a) Within 7 weeks after the effective date of this AD, perform a detailed visual inspection of the elevator cable tension regulator lever assembly to detect discrepancies (including looseness and migration along the splines of the elevator cable tension regulator assembly), in accordance with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999. Repeat the inspection thereafter at intervals not to exceed 1,500 flight hours.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) If no discrepancy is detected during the initial inspection required by paragraph (a) of this AD, perform a detailed visual inspection of the bolt and castellated nut for signs of the bolt being threadbound, in accordance with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999.

(1) If the nut and bolt are serviceable, as specified by the alert service bulletin, prior to further flight, reinstall and retorque the nut, in accordance with the alert service bulletin.

(2) If the nut and bolt are not serviceable, as specified by the alert service bulletin, prior to further flight, replace with a new nut and bolt and torque the nut, in accordance with the alert service bulletin.

(c) If any discrepancy is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, replace the elevator cable tension regulator assembly with a new assembly, in accordance with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999. (d) For each inspection performed as required by paragraph (a) of this AD: Submit a report of the inspection findings (both positive and negative findings) to Information Services, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(e) As of the effective date of this AD, no person shall install any elevator cable tension regulator lever unless that lever has been inspected and applicable corrective actions have been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(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, 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

(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 airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with with Jetstream Alert Service Bulletin J41–A–27–053, dated September 14, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 005–09–99.

(i) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 17, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33289 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–92–AD; Amendment 39–11481; AD 99–26–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes, that requires repetitive inspections to detect cracking and delamination of the containers in which the off-wing emergency evacuation slides are stored, and corrective actions, if necessary. The AD also requires eventual modifications of the slides, which terminates the requirement for repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the loss of the escape slides during flight, which could make the emergency exits located over each wing unusable and result in damage to the fuselage.

DATES: Effective February 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airubus Model A319 and A320 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 14, 1999 (64 FR 55642). That action proposed to require repetitive inspections to detect cracking and delamination of the containers in which the off-wing emergency evacuation slides are stored, and corrective actions, if necessary. That action also proposed to require eventual modifications of the slides, which would terminate the requirement for repetitive inspections.

Comments

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

Support for Terminating Modification

Two commenters agree with the proposal to mandate eventual modifications of the off-wing escape slides within 5 years in order to terminate the repetitive inspections.

Request To Allow Flight With Certain Discrepancies

Two commenters request that paragraph (b) of the proposed AD be revised to allow continued flight if discrepancies are detected that do not exceed the limits specified in Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999. The commenters state that the intent of the Airbus service bulletin and the related Air Cruisers Service Bulletin 004–25–38 is to allow further flight until the next scheduled maintenance of the airplane, provided cracks (or delamination) in the enclosure and door do not exceed the limits specified.

The FAA partially concurs. The FAA acknowledges the manufacturer's conclusion that continued flight with cracking or delamination within the limits specified in the referenced service bulletins is acceptable for a period of time. The FAA has determined that discrepancies within the specified limits would not constitute a hazard to the airplane for a short period of time prior to repair. However, the FAA does not concur with the commenters' suggestion that such repair may be performed at the next scheduled maintenance interval, since no definitive time is specified by which the repair must be accomplished. The FAA has determined that, following detection of discrepancies within specified limits, repair must be accomplished within 90 days, and has revised paragraph (b) of the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 121 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $36,300, or $300 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $170 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $64,130, or $530 per airplane, The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–26–22 **Airbus Industrie:** Amendment 39–11481. Docket 96–NM–92–AD.

Applicability: Model A319 and A320 series airplanes, certificated in any category; except airplanes on which Airbus Modifications 24850 and 25844 have been installed in production, or on which Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999, has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the escape slides during flight, which could make the emergency exits located over each wing unusable and result in damage to the fuselage, accomplish the following:

Inspections and Corrective Actions

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable: Perform a detailed visual inspection to detect cracking and delamination of each off-wing escape slide container, including the container door, in accordance with Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999. Repeat the inspection thereafter at intervals not to exceed 18 months, until accomplishment of the actions required by paragraph (d) of this AD.

(1) Within 500 flight hours after the effective date of this AD.

(2) Within 18 months after the last inspection in accordance with Airbus All Operator Telex 25–09, dated January 2, 1995, or Revision 1, dated February 16, 1995; or Airbus Service Bulletin A320–25–1161, dated June 21, 1995; if accomplished prior to the effective date of this AD.

(3) Within 18 months after modification of the off-wing escape slides in accordance with Airbus Service Bulletin A320–25–1156, dated June 21, 1995; if accomplished prior to the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) If any crack or delamination is found during any inspection required by paragraph (a) of this AD that does not exceed the limits specified in Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999: Within 90 days after detection of the crack or delamination, repair in accordance with the service bulletin, and continue inspecting in accordance with paragraph (a) of this AD.

(c) If any crack or delamination is found during any inspection required by paragraph (a) of this AD that exceeds the limits specified in Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999: Prior to further flight, replace the discrepant container with a serviceable container in accordance with the service bulletin, and continue inspecting in accordance with paragraph (a) of this AD.

Terminating Modification

(d) Within 5 years after the effective date of this AD, modify the off-wing escape slides (i.e., modifications, inspection, repair, and repacking) in accordance with Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999. Modification of the escape slides constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 3: Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999, references Air Cruisers Service Bulletins 004–25–37, Revision 2, dated May 29, 1996, and 004–25–42, dated September 16, 1996, as additional sources of service information for accomplishment of the modification of the off-wing escape slides.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 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

(f) 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.

Incorporation by Reference

(g) The actions shall be done in accordance with Airbus Service Bulletin A320–25–1161, Revision 01, dated February 2, 1999, and Airbus Service Bulletin A320–25–1156, Revision 01, dated February 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–232–132(B), dated June 2, 1999.

(h) This amendment becomes effective on February 1, 2000.

Issued in Renton, Washington, on December 17, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33290 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

[Notice 99–166]

RIN 2700–AC26

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending the regulations on its Information Security

Program, to reflect the correct citation of the applicable Executive Order, a change in the title designation of one NASA office, and an update of the membership list of the NASA Information Security Program Committee.

EFFECTIVE DATE: December 28, 1999.

ADDRESSES: Director, NASA Security Management Office, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: John C. Hagan, 202–358–2308.

List of Subjects in 14 CFR Part 1203

Classified information, Foreign relations.

PART 1203—INFORMATION SECURITY PROGRAM

For reasons set out in the preamble, 14 CFR Part 1203 is amended as follows:

1. The authority citation for part 1203 is revised to read as follows:

Authority: 42 U.S.C. 2451 *et seq.* and E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Section 1203.100 is amended by revising paragraph (a) to read as follows:

§ 1203.100 Legal basis.

(a) Executive Order 12958 (hereinafter referred to as ''the Order''). The responsibilities and authority of the Administrator of NASA with respect to the original classification of official information or material requiring protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States (hereinafter collectively termed ''national security''), and the standards for such classification, are established by ''the Order'' (E.O. 12958, 3 CFR, 1996 Comp., p. 333), as amended (See, Order of October 13, 1995, 3 CFR, 1996 Comp, p. 513), and the Information Security Oversight Office Directive No. 1, as amended (32 CFR part 2001, ''Classified National Security Information'');

* * * * *

3. Section 1203.202 is amended by revising paragraph (g) to read as follows:

§ 1203.202 Responsibilities.

* * * * *

(g) The Director, NASA Security Management Office, is responsible for establishing procedures for the safeguarding of classified information or material (e.g., accountability, control, access, storage, transmission, and marking) and for ensuring that such procedures are systematically reviewed; and those which are duplicative or unnecessary are eliminated.

* * * * *

4. Section 1203.900 is revised to read as follows:

§ 1203.900 Establishment.

Pursuant to Executive Order 12958, ''National Security Information'' and the National Aeronautics and Space Act of 1958, as amended, there is established a NASA Information Security Program Committee (hereinafter referred to as the Committee) as part of the permanent administrative structure of NASA. The Director, NASA Security Management Office, is designated to act as the Chairperson of the Committee. The Senior Security Specialist, NASA Security Management Office, is designated to act as the Committee Executive Secretary.

5. Section 1203. 902 is amended by revising the introductory text and paragraph (a) as follows:

§ 1203.902 Membership.

The Committee will consist of the Chairperson and Executive Secretary. In addition, each of the following NASA officials will nominate one person to Committee memberships:

(a) Associate Administrator for:

(1) Aero-Space Technology.

(2) Space Science.

(3) Space Flight.

(4) External Relations.

(5) Life and Microgravity Sciences and Applications.

* * * * *

Daniel S. Goldin,

Administrator.

[FR Doc. 99–33643 Filed 12–27–99; 8:45 am]

BILLING CODE 2510–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM00–2–000; Order No. 612]

Time Frame for Intervening in and Protesting Federal Power Act Section 205 Filings

Issued December 21, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to provide that, absent a notice providing some other time period, a twenty-one (21) calendar day time period from the date a Federal Power Act (FPA) section 205 rate filing is filed, amended, or supplemented will be provided for interested parties to file any protest or intervention in the proceeding. The final rule thus will give, in most cases, interested parties a date certain to file protests and interventions. The final rule will also provide consistency with already existing Natural Gas Act (NGA) section 4 natural gas rate filing procedures.

EFFECTIVE DATE: This final rule is effective January 27, 2000.

FOR FURTHER INFORMATION CONTACT:

Michael J. McGehee (Technical Information), Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2257

Julia A. Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2019

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents

should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us)* or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us).*

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to provide that, absent a notice providing some other time period, a twenty-one (21) calendar day time period from the date a Federal Power Act (FPA) section 205 rate filing is filed, amended, or supplemented will be provided for interested parties to file any protest or intervention in the proceeding. The final rule thus will give, in most cases, interested parties a date certain to file protests and interventions. The final rule will also provide consistency with already existing Commission procedures for noticing Natural Gas Act (NGA) section 4 natural gas rate filings.

II. Background

Section 205 of the Federal Power Act requires that, absent a grant of waiver of the prior notice requirement, public utilities must provide at least 60 days prior notice to the Commission and to the public before new or revised tariffs or rate schedules can go into effect.[1] The Commission's regulations currently do not provide any specific time frame during that 60-day period for interested parties to intervene in or protest the public utilities' rate filings. Public utilities and the public are uncertain of the due date for filing interventions and protests until the Commission issues its notice of filing.

III. Discussion

Amending the Commission's regulations to provide, in most cases, a date certain for protests or interventions to be filed will provide the industry with specific guidelines as to the date such filings are due. This certainty will enhance the efficiency of the section 205 rate filing and review process. The Commission also believes that the 21-day notice period will provide adequate time for the public to prepare and file any notices of intervention, motions to intervene, or protests.

The 21-day time period will give interested parties a date certain to file protests and interventions. To help determine the date such filings are due, parties can ascertain the filing date of the section 205 rate filing and the content of that filing through the Commission's website (http://www.ferc.fed.us/online/rims/htm). In addition, parties can obtain the text of formal documents issued by the Commission, such as notices of filings, on the Commission Issuance Posting System (CIPS) and the Commission's Records and Information Management System (RIMS), which are also accessible through the Commission's website (http://www.ferc.fed.us). These avenues will provide parties with alternatives to the **Federal Register** to aid them in determining when comments are due.

The final rule essentially codifies current internal Commission practice.[2] Moreover, by establishing a 21-day time period for protests and interventions, rather than some other time period, the final rule will still allow adequate time for the Commission to act on the section 205 rate filings within the 60-day statutory time period for Commission action. In addition, consistent with past practice for noticing purposes, amendments and supplements to section 205 rate filings will be treated the same as the initial section 205 rate filings and noticed for a 21-day time period.

By providing a date certain for interventions, the final rule will provide consistency with already existing Natural Gas Act section 4 natural gas rate filing notice procedures. The Commission's regulations already establish a specific notice period (12 days) for NGA section 4 gas rate filings (on which the Commission must act within a 30-day statutory time period).[3] For noticing purposes, amendments to gas rate filings are also treated the same as initial applications, and trigger a new intervention time period.

In addition, the final rule will provide the Commission flexibility to adjust the 21-day time frame to allow for a different notice period as warranted, since the Commission has the authority to establish a notice period other than 21 days. An instance in which the Commission might establish a notice period other than 21 days could occur when an application is filed that requires Commission authorization pursuant to different sections of the FPA (*e.g.,* section 203 and section 205). In such an instance, the Commission's notice would as a general matter specify that a longer notice period would prevail.

The choice of a 21-day time period rather than a 20-day time period, for example, eliminates the prospect that the final day to protest or intervene will fall on a weekend; where the last day of the notice period falls on a federal holiday, the due date would be the next business day.[4]

In enacting this rule, the Commission has considered the interests of all affected parties and concludes that changing the section 205 noticing procedures is in the public interest. The Commission has balanced the need to allow sufficient time for interested parties to review a filing with the need for the proceeding to progress swiftly. The use of a 21-calendar day standard achieves this balance.

A notice and comment rulemaking procedure is not necessary because the Commission is not proposing a change to substantive rate policies or data collections. Rather the final rule is one of agency organization, procedure or practices for which notice and comment are not required.[5]

IV. Regulatory Flexibility Certification Statement

The Regulatory Flexibility Act[6] requires rulemakings either to contain a description and analysis of the impact the rule will have on small entities, or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[7]

The regulations adopted in this final rule would revise the Commission's regulations to include specific time frames for filing protests and interventions for FPA section 205 rate filings. In so doing, the rule essentially codifies current internal Commission practice. The Commission therefore certifies that this final rule will not have a significant economic impact on small entities.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action

[1] 16 U.S.C. 824d.

[2] Current agency practice generally is to provide a 20-day time period for noticing purposes.

[3] *See* 18 CFR 154.210.

[4] *See* 18 CFR 385.2007(b)(2).

[5] *See* 5 U.S.C. 553(b)(A).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 605b.

that may have a significant adverse effect on the human environment.[8] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are proposals for rules that are procedural.[9] The final rule falls under this exception; consequently, no environmental consideration is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rules.[10] The information collection requirements for section 205 rate filings are approved under OMB Control No. 1902–0096. This final rule does not add or modify the information collection requirements in OMB Control No. 1902–0096. A copy of this final rule will be sent to OMB for informational purposes only.

VII. Effective Date and Congressional Review

The provisions of 5 U.S.C. 801 regarding Congressional review of rulemaking, do not apply to this final rule because the rule concerns agency procedure and practice. The final rule will not substantially affect the rights and obligations of non-agency parities.[11] Therefore, this final rule is effective January 27, 2000.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, and Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, of the *Code of Federal Regulations* as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.8 is revised to read as follows:

§ 35.8 Protests and interventions by interested parties and form for Federal Register notice.

(a) *Protests or interventions.* Unless the notice issued by the Commission provides otherwise, any protest or intervention to a rate filing made pursuant to this part must be filed in accordance with §§ 385.211 and 385.214 of this chapter, on or before 21 days after the subject rate filing. A protest must state the basis for the objection. A protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant a party to the proceeding. A person wishing to become a party to the proceeding must file a motion to intervene.

(b) *Form of notice for* **Federal Register**. The public utility must file a form of notice suitable for publication in the **Federal Register**, as well as a copy of the same notice in electronic format (in ASCII text or WordPerfect 8.0 format) on a 3½″ diskette marked with the name of the applicant and the words ''Notice of Filing,'' which must be in the following form:

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

(Name of Utility) Docket No.

NOTICE OF FILING

Take notice that (name of public utility), on (date), tendered for filing proposed changes in its FERC Electric Service Tariff, (Volume Nos.), [The following language in the first paragraph applies only to increased rate filings.] The proposed changes would increase revenues from jurisdictional sales and service by (amount) based on the 12-month period ending (date). [If changes other than increased rates and charges are proposed, the public utility must concisely state the nature of these changes.]

[The public utility must briefly describe the reasons for the proposed changes in the second paragraph.]

Copies of the filing were served upon the public utility's jurisdictional customers, (other parties the public utility served, *inter alia,* state public service commissions, other government agencies, etc.).

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed in accordance with § 35.9 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

[FR Doc. 99–33593 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–P

[8] 18 CFR Part 380.

[9] 18 CFR 380.4(a)(2)(ii).

[10] 5 CFR Part 1320.

[11] 5 U.S.C. 804(3)(C).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM00–3–000; Order No. 611]

Updates to Instructions for FERC Form No. 1 Filings

Issued December 21, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is updating and correcting its regulations for filings by major electric utilities, licensees, and others. More specifically, this Final Rule updates and corrects the Commission's FERC Form No. 1 filing instructions to: Provide for submission of data over the Internet rather than by diskette; revise certain routing symbols, office numbers, and a title; add a sentence to note that penalty for failure to file only applies if there is a valid control number; and correct typographical errors.

EFFECTIVE DATE: This final rule is effective on January 1, 2000.

FOR FURTHER INFORMATION CONTACT:
Hadas Z. Kozlowski (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Telephone: (202) 208–1029
Brian A. Holmes (Technical Information), Office of Finance, Accounting, and Operations, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Telephone: (202) 219–2618

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting

System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208–1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

The Federal Energy Regulatory Commission is updating and correcting the filing instructions for FERC Form No. 1: Annual Report of Major Electric Utilities, Licensees, and Others (Form No. 1), which is prescribed by Part 141 of the Commission's regulations,[1] to make them consistent with current practice. The Final Rule provides for submitting data electronically over the Internet rather than by diskette, revises certain routing symbols, office numbers, and a title, adds a new sentence noting that penalty for failure to file only applies if there is a valid control number, and corrects various typographical errors.

II. Background

The Commission, in the exercise of its authority under the Federal Power Act, collects data pertaining to the electric utility industry in the United States.[2] One of the principal forms used for collection of this information is Form No. 1, which is submitted annually by some 209 electric utilities and licensees. Form No. 1 consists of cover pages, four pages of general information and instructions, and 117 pages of schedules incorporating financial and operational information pertaining to the respondent companies. Form No. 1 also requires that certain financial information be certified by an independent certified public accountant[3] as conforming to the Commission's Uniform System of Accounts.[4]

Prior to last year, the Commission's Form No. 1 software provided for submitting data files on diskette. Last year, however, the Commission developed a Windows 95 version of the Form No. 1 software, which was used by respondents to submit data files over the Internet. Upgraded software, a Windows 95/98/NT version which replaces the DOS version previously used, is now available; the submission format was changed to facilitate data entry and data base loading, improve data integrity, and to provide Y2K compliance.

This Final Rule conforms the instructions to Form No. 1 at pages i, ii, and iii to reflect editorial changes and existing practice.

III. Discussion

As currently written, the instructions sections of the Form No. 1 provide for the filing of data by diskette. Because the Commission's Form No. 1 software now provides for the electronic submission of data over the Internet, Instruction III, What and Where to Submit, on Page i will be revised to state that entities shall ''Submit this form electronically through the Form 1 Submission Software'' instead of the phrase ''on electronic media consisting of two (2) duplicate data diskettes.'' Similarly, the words ''contained on the electronic media'' will be revised to read ''the electronic filing,'' the words ''electronic media filing'' will be revised to read ''electronic filing,'' and the words ''on the electronic media'' will be revised to read ''electronic filing.'' In addition, the Office of the Secretary's room number will be revised to read ''Room 1A'' and the Chief Accountant's room number will be deleted.

On Page ii, the words ''(c) Continued Reference'' will be revised to read ''(c) Continued,'' the words ''Use the following form'' will be revised to read ''Use the following format.'' In addition, the Public Reference and Files Maintenance Branch room and route symbol will be revised to read ''Room 2A, CI–1.''

The Final Rule also corrects, on Page ii, Instruction V, Where to Send Comments on Public Reporting Burden. The routing symbol for Mr. Michael Miller will now read ''CI–1,'' and his correct title is ''Clearance Officer'' not ''Desk Officer.''

In addition, the public is protected against a collection of information that does not meet the requirements of the Paperwork Reduction Act (P.L. 104–13) (1995). Specifically, if a collection of information does not display a currently valid Office of Management and Budget (OMB) control number, fails to inform the respondent that a response is not required unless the collection of information displays a valid OMB control number, or has been disapproved by the OMB, then the public is not obligated to respond. Accordingly, the Final Rule adds, after the words ''Clearance Officer for the Federal Energy Regulatory Commission'' the words ''No person shall be subject to any penalty if this collection of information does not display a valid control number. (44 U.S.C. 3512(a). 5 CFR 1320.6a.)''

Finally, Instruction VII, of Page iii, provides guidance on what and where to make Form No. 1 resubmissions, and the Final Rule provides that this also be done electronically, by revising it to provide:

> For any resubmissions, submit the electronic filing using the Form 1 Submission Software and an original and six (6) conformed paper copies of the entire Form, as well as the appropriate number of copies of the subscription statement indicated at instruction III(a). Resubmissions must be numbered sequentially on the cover page of the paper copies of the Form. In addition, the cover page of each paper copy must indicate that the filing is a resubmission. Send the resubmissions to the address indicated at instruction III(a).

IV. Information Collection Statement

The OMB regulations require OMB to approve certain reporting and recordkeeping (collections of information) imposed by agency rule.[5] The information collection requirements in this Final Rule are contained in Form No. 1, ''Annual Report of Major electric utilities, licensees, and others'' (OMB Control No. 1902–0021). Because this Final Rule does not involve new information requirements, will have a minimal effect on current information collections, and codifies existing practice, there is no need to obtain OMB approval. However, the Commission is

[1] 18 CFR Part 141.

[2] 16 U.S.C. 825, 825c.

[3] 18 CFR 41.11.

[4] 18 CFR Part 101.

[5] 5 CFR 1320.12.

sending a copy to OMB for informational purposes only.

Title: FERC Form No. 1 Annual Report of Major Electric Utilities, Licensees, and Others.

Action: Proposed Data Collection

OMB Control No. 1902–0021

Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to this collection of information, unless the collection of information displays a valid OMB control number.

Respondents: Major electric utilities, licensees, and certain defined others.

Frequency of Responses: Annually.

Reporting Burden: While the reporting burden for Form No. 1 is 254,353 hours for all respondents, this Final Rule merely conforms the filing instructions to existing practice.

Necessity of Information: The Final Rule revises the filing instructions for Form No. 1, which is required by 18 CFR Part 141, and which is necessary for fulfilling the requirements of the Federal Power Act, including that the Commission may collect data pertaining to the electric utility industry in the United States.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415), or send comments to the Office of Management and Budget, Room 10202 NEOB, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395–3087, fax: (202) 395–7285).

V. National Environmental Policy Act Analysis

The Commission concludes that promulgating this Final Rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[6] This Final Rule is procedural in nature and does not substantially change the effect of the regulation being amended. In addition, the Final Rule involves information gathering, analysis, and dissemination. Therefore, this Final Rule falls within the categorical exemptions provided in the Commission's regulations.[7] Consequently, neither an environmental impact statement nor an environmental assessment is required.

[6] 42 U.S.C. 4332.

[7] 18 CFR 380.4(a)(2)(ii), (a)(5).

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most respondents do not fall within the definition of ''small entity,'' as defined by the RFA.[9] Therefore, the Commission certifies that promulgating this Final Rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities.

VII. Administrative Findings and Effective Date

Because this rule does not itself alter the substantive rights or interests of any interested persons, but rather is merely procedural and ministerial in nature, the Commission finds that prior notice and comment are unnecessary under the Administrative Procedure Act.[10]

Because this rule does not alter the substantive rights or interests of any interested persons but rather modifies the submission process and otherwise corrects and updates errors, the Commission finds good cause to allow this rule to become effective upon less than 30 days' notice.[11] This Final Rule therefore will be made effective January 1, 2000.[12]

VIII. Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[13] That reporting requirement does not apply to this Final Rule, however. The Commission finds that this Final Rule does not substantially affect the rights or obligations of non-agency parties, and therefore falls within a statutory exception for rules relating to agency procedures or practices that do not substantially affect the rights or obligations of non-agency parties.[14]

List of Subjects in 18 CFR Part 141

Electric power, reporting and recordkeeping requirements.

[8] 5 U.S.C. 601–612.

[9] See 5 U.S.C. 601(3).

[10] 5 U.S.C. 553(b)(B).

[11] 5 U.S.C. 553(d)(3).

[12] The Form No. 1 filings are not due to be submitted until on or before April 30. 2000.

[13] 5 U.S.C. 801.

[14] 5 U.S.C. 804(3)(C).

By the Commission.

David P. Boergers,

Secretary.

Instructions for Filing the FERC Form No. 1

GENERAL INFORMATION

I. Purpose

This form is a regulatory support requirement (18 CFR 141.1). It is designed to collect financial and operational information from major electric utilities, Licensees and others subject to the jurisdiction of the Federal Energy Regulatory Commission. This report is also secondarily considered to be a nonconfidential public use form supporting a statistical publication (Financial Statistics of Selected Electric Utilities), published by the Energy Information Administration.

II. Who Must Submit

Each major electric utility, licensee, or other, as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject To the Provisions of The Federal Power Act (18 CFR 101), must submit this form.

Note: Major means having, in each of the three previous calendar years, sales or transmission service that exceeds one of the following:

(1) one million megawatt hours of total annual sales,

(2) 100 megawatt hours of annual sales for resale,

(3) 500 megawatt hours of annual power exchanges delivered, or

(4) 500 megawatt hours of annual wheeling for others (deliveries plus Losses).

III. What and Where to Submit

(a) Submit this form electronically through the Form 1 Submission Software and an original and six (6) conformed paper copies, properly filed in and attested, to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Retain one copy of this report for your files.

Include with the original and each conformed paper copy of this form the subscription statement required by 18 CFR 385.2011(c)(5). Paragraph (c)(5) of 18 CFR 385.2011 requires each respondent submitting data electronically to file a subscription stating that the paper copies contain the same information as the electronic filing, that the signer knows the contents of the paper copies and electronic filing, and that the contents as stated in the copies and electronic filing are true to the best knowledge and belief of the signer.

(b) Submit, immediately upon publication, four (4) copies of the Latest annual report to stockholders and any annual financial or statistical report regularly prepared and distributed to bondholders, security analysts, or industry associations. (Do not include monthly and quarterly reports. Indicate by checking the appropriate box on Page 4, List of Schedules, if the reports to stockholders will be submitted or if no annual report to stockholders is prepared.) Mail these reports to: Chief Accountant, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

(c) For the CPA certification, submit with the original submission, or within 30 days after the filing date for this form, a Letter or report (not applicable to respondents classified as Class C or Class D prior to January 1, 1984):

(i) Attesting to the conformity, in all material aspects, of the below listed (schedules and) pages with the Commission's applicable Uniform Systems of Accounts (including applicable notes relating thereto and the Chief Accountant's published accounting releases), and

(ii) Signed by independent certified public accountants or an independent Licensed public accountant certified or Licensed by a regulatory authority of a State or other political subdivision of the U.S. (See 18 CFR 41.10–41.12 for specific qualifications.)

Schedules	Reference pages
Comparative Balance Sheet	110–113
Statement of Income	114–117
Statement of Retained Earnings ..	118–119
Statement of Cash Flows	120–121
Notes to Financial Statements	122–123

When accompanying this form, insert the Letter or report immediately following the cover sheet. When submitting after the filing date for this form, send the letter or report to the office of the Secretary at the address indicated at III (a).

Use the following format for the Letter or report unless unusual circumstances or conditions, explained in the Letter or report, demand that it be varied. Insert parenthetical phrases only when exceptions are reported.

In connection with our regular examination of the financial statements of for the year ended on which we have reported separately under date of We have also reviewed schedules of FERC Form No. 1 for the year filed with the Federal Energy Regulatory Commission, for conformity in all material respects with the requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Based on our review, in our opinion the accompanying schedules identified in the preceding paragraph (except as noted below) conform in all material respects with the accounting requirements of the Federal Energy Regulatory Commission as set forth in its applicable Uniform System of Accounts and published accounting releases.

State in the letter or report, which, if any, of the pages above do not conform to the Commission's requirements. Describe the discrepancies that exist.

(d) Federal, State and Local Governments and other authorized users may obtain additional blank copies to meet their requirements free of charge from: Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 888 First Street, NE. Room 2A ES–1 Washington, DC 20426, (202) 208–2474.

IV. When To Submit

Submit this report form on or before April 30th of the year following the year covered by this report.

V. Where to Send Comments on Public Reporting Burden.

The public reporting burden for this collection of information is estimated to average 1,217 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data-needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426 (Attention: Mr. Michael Miller, CI–1); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). No person shall be subject to any penalty if this collection of information does not display a valid control number. (44 U.S.C. 3512(a).)

I. Prepare this report in conformity with the Uniform System of Accounts (18 CFR 101) (U.S. of A.). Interpret all accounting words and phrases in accordance with the U. S. of A.

II. Enter in whole numbers (dollars or MWH) only, except where otherwise noted. (Enter cents for averages and figures per unit where cents are important. The truncating of cents is allowed except on the four basic financial statements where rounding is required.) The amounts shown on all supporting pages must agree with the amounts entered on the statements that they support. When applying thresholds to determine significance for reporting purposes, use for balance sheet accounts the balances at the end of the current reporting year, and use for statement of income accounts the current year's amounts.

III. Complete each question fully and accurately, even if it has been answered in a previous annual report. Enter the word ''None'' where it truly and completely states the fact.

IV. For any page(s) that is not applicable to the respondent, omit the page(s) and enter ''NA,'' ''NONE,'' or ''Not Applicable'' in column (d) on the List of Schedules, pages 2, 3, and 4.

V. Enter the month, day, and year for all dates. Use customary abbreviations. The ''Date of Report'' included in the header of each page is to be completed only for resubmissions (see VII. below). The date of the resubmission must be reported in the header for all form pages, whether or not they are changed from the previous filing.

VI. Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported as positive. Numbers having a sign that is different from the expected sign must be reported by enclosing the numbers in parentheses.

VII. For any resubmissions, submit the electronic filing using the Form 1 Submission Software and an original and six (6) conformed paper copies of the entire form, as well as the appropriate number of copies of the subscription statement indicated at instruction III (a). Resubmissions must be numbered sequentially on the cover page of the paper copies of the form. In addition, the cover page of each paper copy must indicate that the filing is a resubmission. Send the resubmissions to the address indicated at instruction III (a).

VIII. Do not make references to reports of previous years or to other reports in lieu of required entries, except as specifically authorized.

IX. Wherever (schedule) pages refer to figures from a previous year, the figures reported must be based upon those shown by the annual report of the previous year, or an appropriate explanation given as to why the different figures were used.

Definitions

I. Commission Authorization (Comm. Auth.)—The authorization of the Federal Energy Regulatory Commission, or any other Commission. Name the commission whose authorization was obtained and give date of the authorization.

II. Respondent—The person, corporation, licensee, agency, authority, or other Legal entity or instrumentality in whose behalf the report is made.

[FR Doc. 99–33592 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8849]

RIN 1545–AW57

Section 663(c); Separate Share Rules Applicable to Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning separate share rules applicable to estates under section 663(c) of the Internal Revenue Code. These regulations provide that substantively separate and independent shares of different beneficiaries are to be treated as separate estates for purposes of computing distributable net income and applying the distribution provisions of sections 661 and 662. These regulations also provide that a surviving spouse's statutory elective share of a decedent's estate and a pecuniary formula bequest are separate shares. Further, a revocable trust that elects to be treated as part of a decedent's estate is a separate share.

DATES: *Effective Date:* December 28, 1999.

Applicability Dates: For dates of applicability of these regulations, see § 1.663(c)–6.

FOR FURTHER INFORMATION CONTACT: Laura Howell, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1999, a notice of proposed rulemaking was published in the **Federal Register** (64 FR 790) relating to the application of the separate share rules to estates under section 663(c). Written comments were received on the proposed regulations, and a public hearing was held on April 22, 1999. After consideration of all the comments, the proposed regulations under section 663(c) are adopted as revised by this Treasury decision.

Explanation of Provisions

General Separate Share Rules

The proposed regulations define a separate share as a separate economic interest in one beneficiary or class of beneficiaries of the decedent's estate such that the economic interests of the beneficiary or class of beneficiaries (for example, rights to income or gains from specified items of property) are not affected by economic interests accruing to another beneficiary or class of beneficiaries. The proposed regulations conclude that there are separate shares in an estate when a beneficiary or class of beneficiaries has an interest in a decedent's estate (whether corpus or income, or both) that no other beneficiary or class of beneficiaries has.

Two commentators suggested a narrower definition of a separate share. One commentator suggested that separate shares exist only when the estate is administered as two or more well-defined shares that could be separate estates. Another commentator suggested that separate share treatment should apply only where the existence of separate shares is clear and the funding thereof does not require burdensome adjustments due to disproportionate distributions.

Generally, the final regulations clarify the definition and narrow the application of the separate share rules that are in the proposed regulations. The final regulations generally define a separate share as a separate economic interest in one beneficiary or class of beneficiaries of the decedent's estate such that the economic interests of the beneficiary or class of beneficiaries neither affect nor are affected by economic interests accruing to another beneficiary or class of beneficiaries. The final regulations add ''nor are affected by'' to clarify the definition of a separate share. Under this revised definition, a separate share generally exists only if it includes both corpus and the income attributable thereto and is independent from any other share. Thus, income earned on assets in one share (first share) and appreciation and depreciation in the value of those assets have no effect on any other share. Similarly, the income and changes in value of any other share have no effect on the first share.

Effect on Section 663(a)(1)

The proposed regulations provide that the separate share rules do not change the rules involving bequests of specific sums of money or specific property described in section 663(a)(1).

Commentators asked for clarification concerning whether the separate share rules apply to bequests described in section 663(a)(1). One commentator recommended that separate share treatment should apply to these bequests. Another commentator suggested that while revising § 1.663(c) to apply to estates, the IRS and the Treasury Department should reconsider and amend § 1.663(a)–1(b)(1) to permit principal distributions that are made to fund both pecuniary formula bequests and surviving spouses' elective shares to be recognized as coming within the definition of excluded gifts or bequests described in section 663(a)(1).

The final regulations provide that bequests described in section 663(a)(1) are not separate shares. The separate share rules are applicable only to determine the distributable net income of each share when applying the distribution provisions of sections 661 and 662 to the trust or estate and its beneficiaries. Bequests described in section 663(a)(1) are not subject to the distribution provisions and therefore are not separate shares.

Surviving Spouse's Elective Share

The proposed regulations provide that a surviving spouse's statutory elective share constitutes a separate share of an estate. As a result, the surviving spouse may be taxed on the estate's gross income only to the extent of the surviving spouse's share of that income under state law.

One commentator recommended that separate share treatment for a surviving spouse's elective share should be reconsidered. Elective shares should be a matter of further study because they are forced by state law, differ from state to state, and usually are part of an acrimonious conflict. Another commentator requested clarification of whether a surviving spouse's statutory elective share is included in the subchapter J estate. Further, this commentator recommended that an elective share that is not entitled to income or appreciation should be excluded from the subchapter J estate, but an elective share that is entitled to income and appreciation should be included in the subchapter J estate.

Conversely, other commentators agreed that separate share treatment should apply to a surviving spouse's statutory elective share regardless of whether the surviving spouse is entitled to income and shares in appreciation or depreciation. One commentator suggested that the separate share examples in the proposed regulations be revised to track more closely the Uniform Probate Code model because it will likely be adopted by most states.

These final regulations do not change the result of the proposed regulations. However, under these final regulations, a surviving spouse's elective share that under local law is entitled to income and to share in appreciation or depreciation constitutes a separate share under the general definition. Further, under a special rule in the final regulations, a surviving spouse's elective share that is not entitled to income or does not share in appreciation or depreciation is also a separate share.

Revocable Trust as a Part of Estate

The proposed regulations provide that a qualified revocable trust that elects under section 645 to be treated as part of the decedent's estate for income tax purposes constitutes a separate share. In response to comments, these final regulations include a reference that the electing revocable trust itself may have two or more separate shares. These final regulations further provide that qualified revocable trusts within the definition of section 645(b)(1) are subject to the separate share rules applicable to estates rather than trusts whether or not an election is made to be part of the estate.

Pecuniary Formula Bequests

The preamble to the proposed regulations requests comments concerning the treatment of pecuniary formula bequests as separate shares. Several commentators, noting that pecuniary formula bequests are similar to a surviving spouse's statutory elective share, suggested that such bequests be treated as separate shares. Commentators disagreed, however, on whether pecuniary formula bequests not entitled to income should be separate shares.

Under these final regulations, any pecuniary formula bequest that is entitled to income and to share in appreciation or depreciation under the governing instrument or local law constitutes a separate share under the general definition. Further, under a special rule, a pecuniary formula bequest that is not entitled to income or to share in appreciation or depreciation is also a separate share if the governing instrument does not provide that it is to be paid or credited in more than three installments. This provision regarding three or fewer installments parallels the specific bequest requirements in section 663(a)(1).

Administrative Rules

Commentators requested guidance concerning several administrative matters. Commentators asked for guidance concerning when separate shares come into existence. The final regulations provide that separate shares come into existence at the earliest moment that a fiduciary may reasonably determine, based upon the known facts, that a separate share exists.

Two commentators expressed concern about the need to readjust the separate shares as a result of an IRS examination. One commentator suggested that separate share treatment should apply to pecuniary formula bequests only if no amended returns and no adjustments to any tax periods would be required when the tax returns were filed in good faith. Another commentator recommended that separate share treatment should not apply to residuary bequests unless or until the regulations provide simple and practical methods of compliance for possible adjustments made during IRS examinations.

These final regulations do not adopt either suggestion. The regulations provide that the fiduciary must use a reasonable and equitable method to determine the value of each separate share and the allocation of taxable income to each share. This approach gives the fiduciary flexibility, within limits, in applying the separate share rules. However, redeterminations in value of those separate shares must be taken into account.

Commentators asked for a clarification of whether gross income of an estate must be allocated to a separate share based upon the amount of income each share is entitled to under the terms of the governing instrument or applicable local law. These final regulations clarify that, in computing the distributable net income for each separate share, the portion of gross income that is income within the meaning of section 643(b) must be allocated to each share based upon the amount of income each share is entitled to under the terms of the governing instrument or applicable local law. A similar allocation rule is provided for the amount of gross income that is not attributable to cash received by a trust or estate, such as a distributive share of a partnership's tax items, or the pro rata share of an S corporation's tax items.

Commentators asked whether the general rule for allocating gross income is applicable for income in respect of a decedent under section 691(a). These final regulations clarify that such gross income is allocated among the separate shares that could potentially be funded with these amounts irrespective of whether a share is entitled to receive any income under the terms of the governing instrument or applicable local law. The amount allocated to each share is based upon the relative value of each of those shares that could potentially be funded with such amounts.

One commentator requested clarification concerning the allocation of expenses to a separate share. These final regulations do not change the long standing rule under § 1.663(c)–2 of the Income Tax Regulations that any expense which is applicable solely to one separate share of a trust is not available as a deduction to any other share of the same trust. The IRS and the Treasury Department are not aware of any issues that have arisen in applying this rule.

Interest on Pecuniary Bequests or Delayed Estate Distributions

Commentators questioned why the proposed regulations take the position that interest, imposed by state law, on a pecuniary bequest or a delayed estate distribution is a payment of interest by the estate and not a distribution for purposes of sections 661 and 662. These same commentators indicated that alternatively such interest payments should be deductible administrative expenses if the interest was required to be paid by state law as part of the distribution and settlement of the estate. The final regulations retain the position taken in the proposed regulations because the IRS and the Treasury Department view this result as compelled by section 163(h) which disallows a deduction for personal interest as described in section 163(h)(2).

Requests Concerning Applicable Dates

One commentator suggested that either the applicable date of these final regulations should be retroactive to the date that section 1307 of the Tax Reform Act of 1997 became applicable, or the regulations should provide that during the interim period before final regulations are published, the IRS will accept any reasonable interpretation of the separate share rules, including those rules provided in the proposed regulations.

Another commentator requested that the final regulations, to the extent applicable to trusts, apply prospectively and apply either only to trusts that become irrevocable after the date the regulations are finalized or only to taxable years of trusts beginning after the date the regulations are finalized.

The final regulations have taken these comments into account as noted below.

Effective Dates

These final regulations are applicable for estates and qualified revocable trusts within the meaning of section 645(b)(1) with respect to decedents who die after December 28, 1999. However, for estates and qualified revocable trusts with respect to decedents who died after the date that section 1307 of the Tax Reform Act of 1997 became effective but before December 28, 1999, the IRS will accept any reasonable interpretation of the separate share provisions, including those provisions provided in 1999–11 I.R.B. 41 (see § 601.601(d)(2)(ii)(b)). For trusts other than qualified revocable trusts, § 1.663(c)–2 is applicable for taxable years of such trusts beginning after December 28, 1999.

Effect on Other Documents

The following publications are obsolete as of December 28, 1999:

Rev. Rul. 64–101 (1964–1 C.B. 77).
Rev. Rul. 71–167 (1971–1 C.B. 163).

Special Analyses

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

Drafting Information. The principal author of these regulations is Laura Howell of the Office of Assistant Chief Counsel (Passthroughs and Special

Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and Recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Sections 1.663(c)–1, 1.663(c)–2, 1.663(c)–3, 1.663(c)–4, 1.663(c)–5, and 1.663(c)–6 also issued under 26 U.S.C. 663(c). * * *

Par. 2. In § 1.663(a)–1, paragraph (b)(3) is amended by revising *Example 1*, *Example 2*, and *Example 3* to read as follows:

§ 1.663(a)–1 Special rules applicable to sections 661 and 662; exclusion; gifts, bequests, etc.

* * * * *

(b) * * *

(3) * * *

Example 1. Under the terms of a will, a legacy of $5,000 was left to A, 1,000 shares of X company stock was left to W, and the balance of the estate was to be divided equally between W and B. No provision was made in the will for the disposition of income of the estate during the period of administration. The estate had income of $25,000 during the taxable year 1954, which was accumulated and added to corpus for estate accounting purposes. During the taxable year, the executor paid the legacy of $5,000 in a lump sum to A, transferred the X company stock to W, and made no other distributions to beneficiaries. The distributions to A and W qualify for the exclusion under section 663(a)(1).

Example 2. Under the terms of a will, the testator's estate was to be distributed to A. No provision was made in the will for the distribution of the estate's income during the period of administration. The estate had income of $50,000 for the taxable year. The estate distributed to A stock with a basis of $40,000 and with a fair market value of $40,000 on the date of distribution. No other distributions were made during the year. The distribution does not qualify for the exclusion under section 663(a)(1), because it is not a specific gift to A required by the terms of the will. Accordingly, the fair market value of the property ($40,000) represents a distribution within the meaning of sections 661(a) and 662(a) (see § 1.661(a)–2(c)).

Example 3. Under the terms of a trust instrument, trust income is to be accumulated for a period of 10 years. During the eleventh year, the trustee is to distribute $10,000 to B, payable from income or corpus, and $10,000 to C, payable out of accumulated income. The trustee is to distribute the balance of the accumulated income to A. Thereafter, A is to receive all the current income until the trust terminates. Only the distribution to B would qualify for the exclusion under section 663(a)(1).

* * * * *

Par. 3. Section 1.663(c)–1 is amended as follows:

1. The section heading is revised.

2. Paragraph (a) is amended by revising the words ''trust'' and ''trusts'' to read ''trust (or estate)'' and ''trusts (or estates)'', respectively, in the first through fourth sentences.

3. Paragraph (b)(2) is removed and paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively.

4. Paragraphs (b) through (d) are amended by revising the words ''trust'' and ''trusts'' to read ''trust (or estate)'' and ''trusts (or estates)'', respectively.

The revision reads as follows:

§ 1.663(c)–1 Separate shares treated as separate trusts or as separate estates; in general.

* * * * *

Par. 4. Section 1.663(c)–2, is revised to read as follows:

§ 1.663(c)–2 Rules of administration.

(a) *When separate shares come into existence.* A separate share comes into existence upon the earliest moment that a fiduciary may reasonably determine, based upon the known facts, that a separate economic interest exists.

(b) *Computation of distributable net income for each separate share*—(1) *General rule.* The amount of distributable net income for any share under section 663(c) is computed as if each share constituted a separate trust or estate. Accordingly, each separate share shall calculate its distributable net income based upon its portion of gross income that is includible in distributable net income and its portion of any applicable deductions or losses.

(2) *Section 643(b) income.* This paragraph (b)(2) governs the allocation of the portion of gross income includible in distributable net income that is income within the meaning of section 643(b). Such gross income is allocated among the separate shares in accordance with the amount of income that each share is entitled to under the terms of the governing instrument or applicable local law.

(3) *Income in respect of a decedent.* This paragraph (b)(3) governs the allocation of the portion of gross income includible in distributable net income that is income in respect of a decedent within the meaning of section 691(a) and is not income within the meaning of section 643(b). Such gross income is allocated among the separate shares that could potentially be funded with these amounts irrespective of whether the share is entitled to receive any income under the terms of the governing instrument or applicable local law. The amount of such gross income allocated to each share is based on the relative value of each share that could potentially be funded with such amounts.

(4) *Gross income not attributable to cash.* This paragraph (b)(4) governs the allocation of the portion of gross income includible in distributable net income that is not attributable to cash received by the estate or trust (for example, original issue discount, a distributive share of partnership tax items, and the pro rata share of an S corporation's tax items). Such gross income is allocated among the separate shares in the same proportion as section 643(b) income from the same source would be allocated under the terms of the governing instrument or applicable local law.

(5) *Deductions and losses.* Any deduction or any loss which is applicable solely to one separate share of the trust or estate is not available to any other share of the same trust or estate.

(c) *Computations and valuations.* For purposes of calculating distributable net income for each separate share, the fiduciary must use a reasonable and equitable method to make the allocations, calculations, and valuations required by paragraph (b) of this section.

Par. 5. Section 1.663(c)–3 is amended by revising the section heading and the first sentence of paragraph (a), and removing paragraph (f) to read as follows:

§ 1.663(c)–3 Applicability of separate share rule to certain trusts.

(a) The applicability of the separate share rule provided by section 663(c) to trusts other than qualified revocable trusts within the meaning of section 645(b)(1) will generally depend upon whether distributions of the trust are to be made in substantially the same manner as if separate trusts had been created.

* * * * *

§ 1.663(c)–4 [Redesignated as § 1.663(c)–5]

Par. 6. Section 1.663(c)–4 is redesignated as § 1.663(c)–5.

Par. 7. A new § 1.663(c)–4 is added to read as follows:

§ 1.663(c)–4 Applicability of separate share rule to estates and qualified revocable trusts.

(a) *General rule.* The applicability of the separate share rule provided by section 663(c) to estates and qualified revocable trusts within the meaning of section 645(b)(1) will generally depend upon whether the governing instrument and applicable local law create separate economic interests in one beneficiary or class of beneficiaries of such estate or trust. Ordinarily, a separate share exists if the economic interests of the beneficiary or class of beneficiaries neither affect nor are affected by the economic interests accruing to another beneficiary or class of beneficiaries. Separate shares include, for example, the income on bequeathed property if the recipient of the specific bequest is entitled to such income and a surviving spouse's elective share that under local law is entitled to income and appreciation or depreciation. Furthermore, a qualified revocable trust for which an election is made under section 645 is always a separate share of the estate and may itself contain two or more separate shares. Conversely, a gift or bequest of a specific sum of money or of property as defined in section 663(a)(1) is not a separate share.

(b) *Special rule for certain types of beneficial interests.* Notwithstanding the provisions of paragraph (a) of this section, a surviving spouse's elective share that under local law is determined as of the date of the decedent's death and is not entitled to income or any appreciation or depreciation is a separate share. Similarly, notwithstanding the provisions of paragraph (a) of this section, a pecuniary formula bequest that, under the terms of the governing instrument or applicable local law, is not entitled to income or to share in appreciation or depreciation constitutes a separate share if the governing instrument does not provide that it is to be paid or credited in more than three installments.

(c) *Shares with multiple beneficiaries and beneficiaries of multiple shares.* A share may be considered as separate even though more than one beneficiary has an interest in it. For example, two beneficiaries may have equal, disproportionate, or indeterminate interests in one share which is economically separate and independent from another share in which one or more beneficiaries have an interest. Moreover, the same person may be a beneficiary of more than one separate share.

Par. 8. Newly designated § 1.663(c)–5 is amended by:

1. Revising the section heading and introductory text.

2. Redesignating the *Example* as *Example 1* and, in newly designated *Example 1,* redesignating paragraphs (a) through (e) as paragraphs (i) through (v), respectively.

3. Adding *Example 2, Example 3, Example 4, Example 5, Example 6, Example 7, Example 8, Example 9, Example 10,* and *Example 11.*

The revisions and additions read as follows:

§ 1.663(c)–5 Examples.

Section 663(c) may be illustrated by the following examples:

Example 1. * * *

Example 2 (i) *Facts.* Testator, who dies in 2000, is survived by a spouse and two children. Testator's will contains a fractional formula bequest dividing the residuary estate between the surviving spouse and a trust for the benefit of the children. Under the fractional formula, the marital bequest constitutes 60% of the estate and the children's trust constitutes 40% of the estate. During the year, the executor makes a partial proportionate distribution of $1,000,0000, ($600,000 to the surviving spouse and $400,000 to the children's trust) and makes no other distributions. The estate receives dividend income of $20,000, and pays expenses of $8,000 that are deductible on the estate's federal income tax return.

(ii) *Conclusion.* The fractional formula bequests to the surviving spouse and to the children's trust are separate shares. Because Testator's will provides for fractional formula residuary bequests, the income and any appreciation in the value of the estate assets are proportionately allocated between the marital share and the trust's share. Therefore, in determining the distributable net income of each share, the income and expenses must be allocated 60% to the marital share and 40% to the trust's share. The distributable net income is $7,200 (60% of income less 60% of expenses) for the marital share and $4,800 (40% of income less 40% of expenses) for the trust's share. Because the amount distributed in partial satisfaction of each bequest exceeds the distributable net income of each share, the estate's distribution deduction under section 661 is limited to the sum of the distributable net income for both shares. The estate is allowed a distribution deduction of $12,000 ($7,200 for the marital share and $4,800 for the trust's share). As a result, the estate has zero taxable income ($20,000 income less $8,000 expenses and $12,000 distribution deduction). Under section 662, the surviving spouse and the trust must include in gross income $7,200 and $4,800, respectively.

Example 3. The facts are the same as in *Example 2,* except that in 2000 the executor makes the payment to partially fund the children's trust but makes no payment to the surviving spouse. The fiduciary must use a reasonable and equitable method to allocate income and expenses to the trust's share. Therefore, depending on when the distribution is made to the trust, it may no longer be reasonable or equitable to determine the distributable net income for the trust's share by allocating to it 40% of the estate's income and expenses for the year. The computation of the distributable net income for the trust's share should take into consideration that after the partial distribution the relative size of the trust's separate share is reduced and the relative size of the spouse's separate share is increased.

Example 4 (i) *Facts.* Testator, who dies in 2000, is survived by a spouse and one child. Testator's will provides for a pecuniary formula bequest to be paid in not more than three installments to a trust for the benefit of the child in the amount needed to reduce the estate taxes to zero and a bequest of the residuary to the surviving spouse. The will provides that the bequest to the child's trust is not entitled to any of the estate's income and does not participate in appreciation or depreciation in estate assets. During the 2000 taxable year, the estate receives dividend income of $200,000 and pays expenses of $15,000 that are deductible on the estate's federal income tax return. The executor partially funds the child's trust by distributing to it securities that have an adjusted basis to the estate of $350,000 and a fair market value of $380,000 on the date of distribution. As a result of this distribution, the estate realizes long-term capital gain of $30,000.

(ii) *Conclusion.* The estate has two separate shares consisting of a formula pecuniary bequest to the child's trust and a residuary bequest to the surviving spouse. Because, under the terms of the will, no estate income is allocated to the bequest to the child's trust, the distributable net income for that trust's share is zero. Therefore, with respect to the $380,000 distribution to the child's trust, the estate is allowed no deduction under section 661, and no amount is included in the trust's gross income under section 662. Because no distributions were made to the spouse, there is no need to compute the distributable net income allocable to the marital share. The taxable income of the estate for the 2000 taxable year is $214,400 ($200,000 (dividend income) plus $30,000 (capital gain) minus $15,000 (expenses) and minus $600 (personal exemption)).

Example 5. The facts are the same as in *Example 4,* except that during 2000 the estate reports on its federal income tax return a pro rata share of an S corporation's tax items and a distributive share of a partnership's tax items allocated on Form K–1s to the estate by the S corporation and by the partnership, respectively. Because, under the terms of the will, no estate income from the S corporation or the partnership would be allocated to the pecuniary bequest to child's trust, none of the tax items attributable to the S corporation stock or the partnership interest is allocated to the trust's separate share. Therefore, with respect to the $380,000 distribution to the trust, the estate is allowed no deduction under section 661, and no amount is included in the trust's gross income under section 662.

Example 6. The facts are the same as in *Example 4,* except that during 2000 the estate receives a distribution of $900,000 from the

decedent's individual retirement account that is included in the estate's gross income as income in respect of a decedent under section 691(a). The entire $900,000 is allocated to corpus under applicable local law. Both the separate share for the child's trust and the separate share for the surviving spouse may potentially be funded with the proceeds from the individual retirement account. Therefore, a portion of the $900,000 gross income must be allocated to the trust's separate share. The amount allocated to the trust's share must be based upon the relative values of the two separate shares using a reasonable and equitable method. The estate is entitled to a deduction under section 661 for the portion of the $900,000 properly allocated to the trust's separate share, and the trust must include this amount in income under section 662.

Example 7 (i) *Facts.* Testator, who dies in 2000, is survived by a spouse and three adult children. Testator's will divides the residue of the estate equally among the three children. The surviving spouse files an election under the applicable state's elective share statute. Under this statute, a surviving spouse is entitled to one-third of the decedent's estate after the payment of debts and expenses. The statute also provides that the surviving spouse is not entitled to any of the estate's income and does not participate in appreciation or depreciation of the estate's assets. However, under the statute, the surviving spouse is entitled to interest on the elective share from the date of the court order directing the payment until the executor actually makes payment. During the estate's 2001 taxable year, the estate distributes to the surviving spouse $5,000,000 in partial satisfaction of the elective share and pays $200,000 of interest on the delayed payment of the elective share. During that year, the estate receives dividend income of $3,000,000 and pays expenses of $60,000 that are deductible on the estate's federal income tax return.

(ii) *Conclusion.* The estate has four separate shares consisting of the surviving spouse's elective share and each of the three children's residuary bequests. Because the surviving spouse is not entitled to any estate income under state law, none of the estate's gross income is allocated to the spouse's separate share for purposes of determining that share's distributable net income. Therefore, with respect to the $5,000,000 distribution, the estate is allowed no deduction under section 661, and no amount is included in the spouse's gross income under section 662. The $200,000 of interest paid to the spouse must be included in the spouse's gross income under section 61. Because no distributions were made to any other beneficiaries during the year, there is no need to compute the distributable net income of the other three separate shares. Thus, the taxable income of the estate for the 2000 taxable year is $2,939,400 ($3,000,000 (dividend income) minus $60,000 (expenses) and $600 (personal exemption)). The estate's $200,000 interest payment is a nondeductible personal interest expense described in section 163(h).

Example 8. The will of Testator, who dies in 2000, directs the executor to distribute the X stock and all dividends therefrom to child A and the residue of the estate to child B. The estate has two separate shares consisting of the income on the X stock bequeathed to A and the residue of the estate bequeathed to B. The bequest of the X stock meets the definition of section 663(a)(1) and therefore is not a separate share. If any distributions, other than shares of the X stock, are made during the year to either A or B, then for purposes of determining the distributable net income for the separate shares, gross income attributable to dividends on the X stock must be allocated to A's separate share and any other income must be allocated to B's separate share.

Example 9. The will of Testator, who dies in 2000, directs the executor to divide the residue of the estate equally between Testator's two children, A and B. The will directs the executor to fund A's share first with the proceeds of Testator's individual retirement account. The date of death value of the estate after the payment of debts, expenses, and estate taxes is $9,000,000. During 2000, the $900,000 balance in Testator's individual retirement account is distributed to the estate. The entire $900,000 is allocated to corpus under applicable local law. This amount is income in respect of a decedent within the meaning of section 691(a). The estate has two separate shares, one for the benefit of A and one for the benefit of B. If any distributions are made to either A or B during the year, then, for purposes of determining the distributable net income for each separate share, the $900,000 of income in respect of a decedent must be allocated to A's share.

Example 10. The facts are the same as in *Example 9*, except that the will directs the executor to fund A's share first with X stock valued at $3,000,000, rather than with the proceeds of the individual retirement account. The estate has two separate shares, one for the benefit of A and one for the benefit of B. If any distributions are made to either A or B during the year, then, for purposes of determining the distributable net income for each separate share, the $900,000 of gross income attributable to the proceeds from the individual retirement account must be allocated between the two shares to the extent that they could potentially be funded with those proceeds. The maximum amount of A's share that could potentially be funded with the income in respect of decedent is $1,500,000 ($4,500,000 value of share less $3,000,000 to be funded with stock) and the maximum amount of B's share that could potentially be funded with income in respect of decedent is $4,500,000. Based upon the relative values of these amounts, the gross income attributable to the proceeds of the individual retirement account is allocated $225,000 (or one-fourth) to A's share and $675,000 (or three-fourths) to B's share.

Example 11. The will of Testator, who dies in 2000, provides that after the payment of specific bequests of money, the residue of the estate is to be divided equally among the Testator's three children, A, B, and C. The will also provides that during the period of administration one-half of the income from the residue is to be paid to a designated charitable organization. After the specific bequests of money are paid, the estate initially has three equal separate shares. One share is for the benefit of the charitable organization and A, another share is for the benefit of the charitable organization and B, and the last share is for the benefit of the charitable organization and C. During the period of administration, payments of income to the charitable organization are deductible by the estate to the extent provided in section 642(c) and are not subject to the distribution provisions of sections 661 and 662.

Par. 9. Section 1.663(c)–6 is added to read as follows:

§ 1.663(c)–6 Effective dates.

Sections 1.663(c)–1 through 1.663(c)–5 are applicable for estates and qualified revocable trusts within the meaning of section 645(b)(1) with respect to decedents who die after December 28, 1999. However, for estates and qualified revocable trusts with respect to decedents who died after the date that section 1307 of the Tax Reform Act of 1997 became effective but before December 28, 1999, the IRS will accept any reasonable interpretation of the separate share provisions, including those provisions provided in 1999–11 I.R.B. 41 (see § 601.601(d)(2)(ii)(b) of this chapter). For trusts other than qualified revocable trusts, § 1.663(c)–2 is applicable for taxable years of such trusts beginning after December 28, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 13, 1999.

Jonathan Talisman,

Acting Assistant Secretary for the Treasury.

[FR Doc. 99–32694 Filed 12–27–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8850]

RIN 1545–AV69

Information Reporting With Respect to Certain Foreign Partnerships and Certain Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6038 of the Internal Revenue Code relating to information reporting requirements for United States persons owning interests in controlled foreign partnerships (CFPs). This document also contains

amendments to the final regulations under section 6038 relating to the reporting requirements of U.S. shareholders of certain foreign corporations and amendments to the final regulations under section 6038B relating to the reporting requirements with respect to transfers of property to foreign partnerships and to foreign corporations.

DATES: *Effective Dates:* These regulations are effective December 29, 1999, except that § 1.6038B–2(a)(5) is effective January 1, 2000.

Applicability Dates: For dates of applicability, see §§ 1.6038–2(l), 1.6038–3(l), and 1.6038B–2(c)(4) and (j)(3).

FOR FURTHER INFORMATION CONTACT: Eliana Dolgoff, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1545–1615, 1545–1617, and 1545–1317. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865.

The burden of complying with the collection of information required to be reported on Form 5471 is reflected in the burden for Form 5471.

The burden of complying with the collection of information required to be reported on Form 926 is reflected in the burden for Form 926.

The estimated annual burden per respondent of complying with the collection of information in § 1.6038–3(c)(1)(ii)(B) and (2)(ii)(B) varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 9, 1998, the IRS published in the **Federal Register** (63 FR 48144) proposed regulations relating to the reporting requirements under section 6038 of United States persons that are direct or indirect partners of CFPs. A public hearing on the proposed regulations was held on November 10, 1998, even though no requests to speak at the hearing were received. Though no comments were made at the hearing, written comments were received. After consideration of all of the written comments, the proposed regulations under section 6038 are adopted as revised by this Treasury decision. The revisions are discussed in the Summary of Public Comments and Explanation of Revisions section of this preamble. This document also contains amendments to certain other final regulations. These amendments are also discussed below.

Summary of Public Comments and Explanation of Revisions

A. General Comments Regarding the Proposed Section 6038 CFP Regulations

Some commentators suggested that the final regulations should exempt state and local government employee retirement plans from the section 6038 reporting requirements. The final regulations provide that trusts relating to state and local government employee retirement plans are not required to report under section 6038, unless required to do so in the instructions to Form 8865, ''Return of U.S. Persons with Respect to Certain Foreign Partnerships.''

One commentator asserted that the reasonable cause exception to the section 6038 penalties appears to apply only to failures to file Form 8865 and therefore would not protect a taxpayer who files an incomplete Form 8865 because the taxpayer was unable to obtain all the required information from the foreign partnership. The reasonable cause exception has been modified to make clear that it applies to both a failure to file Form 8865 and to a failure to submit all information required to be submitted.

Commentators requested that the final regulations provide that the section 6038 penalties do not apply when there is minor noncompliance with the reporting requirements under section 6038. The commentators expressed concern that taxpayers will be subject to penalties for small discrepancies in the information reported and suggested that the penalties apply only if there is a substantial failure to report the required information, or if materially false or inaccurate information is submitted. Because the IRS and Treasury believe adding such a standard might encourage taxpayers to submit incomplete Forms 8865, the standard was not added to the final regulations. A taxpayer may, nonetheless, avoid application of the section 6038 penalties because of minor noncompliance with the section 6038 reporting requirements by demonstrating reasonable cause. See § 1.6038–3(k)(4).

Commentators also requested that the IRS add additional, specific reasonable cause exceptions to the section 6038 penalties. For example, one commentator requested a specific exception be provided for controlling ten-percent partners (see definition in § 1.6038–3(a)(2)) that are unable to obtain all information required to be reported by controlling ten-percent partners. The final regulations do not contain additional, specific reasonable cause exceptions. Whether there is reasonable cause depends on all the facts and circumstances of the particular case. Any person who is unable to obtain information may apply for a reasonable cause determination specific to that person's situation.

Finally, a commentator asked that in the case of an affiliated group of corporations filing a consolidated income tax return, the final regulations not require the members to file separate Forms 8865 if one member of the group files Form 8865. The final regulations adopt this recommendation. The common parent corporation of an affiliated group of corporations filing a consolidated income tax return may file one Form 8865 on behalf of all other members of the group required to file Form 8865 pursuant to section 6038 with respect to a particular foreign partnership.

B. Section 6038/Section 6031 Overlap

Some commentators requested that the final regulations address the potential overlap between section 6031 and section 6038. In general, section 6031(e) provides that a foreign partnership must file Form 1065, ''U.S. Partnership Return of Income,'' if it has gross income derived from sources within the United States or gross income that is effectively connected

with the conduct of a trade or business within the United States.

Section 6038 provides generally that a U.S. partner of a foreign partnership must file Form 8865 with respect to that partnership if the partner individually, or collectively with other ten-percent or greater U.S. partners, owns more than a fifty-percent interest in the partnership. Therefore, in some cases, both Forms 1065 and 8865 would be required to be filed with regard to the same partnership for the same tax year of the partnership. Although the two forms are not identical, and one is filed by the partnership while the other is filed by the relevant partners, the information required by the two forms is substantially the same.

Additionally, some confusion may result from the fact that the two forms contain similarly titled schedules. In particular, each form has a Schedule K–1 on which information about a partner's distributive share of partnership income, deductions, etc., is to be reported. The IRS is working to eliminate discrepancies between the two schedules. However, even if the discrepancies are eliminated, it is still possible the two schedules will not contain identical information because one schedule will be prepared by a partner and one will be prepared by the partnership.

In response to the comments that the overlap between section 6031 and section 6038 reporting will be burdensome to taxpayers when both sets of requirements apply, and to help avoid any confusion on the part of taxpayers with respect to which Schedule K–1 they should use to compute their tax liabilities, the final section 6038 regulations reduce the burden imposed by section 6038 in the case of an overlap. They provide that if a foreign partnership completes and files Form 1065, a U.S. person required to report under section 6038 must use a copy of the filed Form 1065, including the Schedules K–1, in conjunction with fulfilling the person's section 6038 reporting obligation. Specifically, the instructions to Form 8865 will state which schedules on Form 1065 are considered equivalent to schedules on Form 8865. A U.S. partner must attach to the partner's Form 8865 a copy of the Form 1065 schedules that are considered equivalent to the schedules the partner is required to complete on Form 8865 as a controlling fifty-percent partner (see definition in § 1.6038–3(a)(1)) or as a controlling ten-percent partner. A partner should not complete a schedule on Form 8865 when the partner attaches a copy of the equivalent Form 1065 schedule to its Form 8865. Should a schedule on Form 8865 ask for information that is not required to be reported on the equivalent Form 1065 schedule, the partner is not required to report that information on its Form 8865 if a copy of the completed equivalent Form 1065 schedule is attached to its Form 8865. A partner attaching copies of schedules from Form 1065 to its Form 8865 must still complete the parts of Form 8865 that the person is required to complete as a controlling fifty-percent partner, or as a controlling ten-percent partner, and for which there is no equivalent Form 1065 schedule (for example, a partner must still complete the first page of Form 8865 and certain schedules on page two of the form).

An example of how a person will use a completed Form 1065 to fulfill its section 6038 filing obligation is as follows. Section 1.6038–3(g)(2)(iii) requires a controlling fifty-percent partner to report aggregate information about the partners' distributive shares of income, gain, losses, deductions and credits. Such information is reported on Schedule K of Form 8865. The same information is also required to be submitted on Schedule K of Form 1065. The instructions to Form 8865 will provide that Schedules K on Forms 1065 and 8865 are equivalent. Accordingly, if the partnership completes and files a Form 1065, a controlling fifty-percent partner filing Form 8865 must attach a copy of the Schedule K from the Form 1065 to the partner's Form 8865 and should not complete Schedule K on Form 8865. The partner must also attach all other Form 1065 schedules that are considered equivalent to Form 8865 schedules that the partner must complete as a controlling fifty-percent partner. Additionally, the partner must still complete page one of Form 8865 and Schedules A ''Constructive Ownership of Partnership Interest,'' A–1 ''Certain Partners of Foreign Partnership,'' A–2 ''Affiliation Schedule,'' and N ''Transactions Between Controlled Foreign Partnership and Partners or Other Related Entities'' of Form 8865.

Similarly, a controlling ten-percent partner must submit on Schedule K–1 of Form 8865 a statement of the income, gain, losses, deductions and credits allocated to the partner's direct interest in the partnership. See § 1.6038–3(g)(1)(i). The same information is also required to be reported on Schedule K–1 of Form 1065. Therefore, if the partnership completes and files Form 1065, the partner must attach to its Form 8865 a copy of its Schedule K–1 from the Form 1065 completed by the partnership and should not complete Schedule K–1 on Form 8865. The partner is still required to complete the portions of pages one and two of Form 8865 applicable to controlling ten-percent partners, as well as Schedule N.

Another comment asserted that the proposed regulations imposed an excessive reporting burden on taxpayers and that they had the effect of nullifying the section 6031(e) limitation on reporting required of foreign partnerships. The comment suggested that the IRS require only those items specifically enumerated in section 6038(a)(1) to be reported under section 6038.

Section 6038 grants the IRS authority to require taxpayers to submit more than the items enumerated in section 6038(a)(1). Section 6038 provides that the Secretary may require the furnishing of any other information that is similar or related in nature to that specified in the first sentence of section 6038(a)(1), or which the Secretary determines to be appropriate to carry out the provision of Title 26. The IRS has determined that all of the information that the final section 6038 regulations require taxpayers to submit is necessary for the IRS to carry out the provisions of Title 26.

Additionally, as explained above, section 6031(e) and section 6038 differ with respect to whom they require to report and when the reporting obligation applies. Section 6031(e) applies only to the requirement that a Form 1065 be filed, to the application of the TEFRA partnership-level audit procedures, and to the requirement that a partnership report information about its operations, even when there is limited U.S. ownership in the partnership. In contrast, section 6038 requires certain U.S. partners to report information when the foreign partnership in which they own an interest has substantial U.S. ownership. Section 6031(e) was added to the Internal Revenue Code at the same time that section 6038 was amended to apply to CFPs. See Taxpayer Relief Act of 1997, Public Law 105–34, sections 1141–1142 (111 Stat. 983) (1997). Therefore, rather than intending section 6031(e) to limit the amount of information required to be reported pursuant to section 6038, Congress intended the two provisions to work together to ensure that the IRS receives sufficient information about foreign partnerships.

C. Tiered Partnerships

Commentators requested that section 6038 reporting apply only to first-tier CFPs, *i.e.,* section 6038 reporting should only be required of U.S. persons with respect to foreign partnerships in which

they own a direct interest. However, section 6038(e)(3)(B) provides that rules similar to the rules of section 267(c) shall apply when determining whether a person owns a fifty-percent interest in a foreign partnership. Additionally, the statute does not require that a U.S. person own its interest in the CFP directly. Therefore, the final regulations require section 6038 reporting of United States persons whose ownership interests are entirely the result of constructive ownership from other persons.

Nevertheless, certain exceptions and modifications to this rule may apply. Persons that do not own direct interests may qualify for a reduced reporting obligation pursuant to the exception for constructive owners in § 1.6038–3(c)(2). Additionally, certain information required by the final section 6038 regulations must be submitted only if the partner owns a direct interest in the foreign partnership. For example, § 1.6038–3(g)(1)(i) provides that the person reporting under section 6038 must provide a statement of the income, gain, losses, deductions and credits allocated to that person's direct interest in the partnership. Accordingly, if a person is reporting under section 6038 but owns no direct interest in the partnership, that person will not have to submit information under § 1.6038–3(g)(1)(i). Finally, the final regulations require attribution from nonresident alien family members only if the person to whom the interest is being attributed already owns a direct or indirect (under the rules of section 267(c)(1) or (5)) interest in the partnership. See § 1.6038–3(b)(4).

D. Failure To Recognize That an Arrangement Is a Partnership or That a Partnership Is a Foreign Partnership

Commentators expressed concern that taxpayers might fail to report under section 6038 because they failed to recognize that their arrangement constituted a partnership. Additionally, if no entity is formed under foreign law, but a partnership is determined to exist, it may be difficult to determine whether the partnership is foreign or domestic. Some commentators recommended that the IRS exclude partnerships not formed under a foreign law statute from the reporting requirements, subject to an anti-abuse rule. The final regulations do not adopt this recommendation and additional guidance on these issues is beyond the scope of this document. They do, however, provide that the section 6038 reporting requirements do not apply to any United States person with respect to a foreign partnership that has validly elected (or is deemed to have elected) to be excluded from the application of subchapter K. See § 1.6038–3(e). Additionally, a taxpayer that does not comply with section 6038 because it mistakenly concluded that its arrangement was not a partnership, or that it was not a foreign partnership, may apply for a reasonable cause determination. See § 1.6038–3(k)(4).

E. Section 6038 (CFPs) Effective Date

Section 1.6038–3 is applicable to CFP tax years ending on or after December 31, 2000. United States persons are not required to report under section 6038 for CFP tax years ending before December 31, 2000.

F. Availability of Form 8865

A United States person required to report information pursuant to section 6038 must do so by completing and filing Form 8865. A final version of Form 8865 will be released prior to January 1, 2000. Taxpayers will be able to download a copy of the form and its instructions from the IRS Internet website located at www.irs.ustreas.gov.

G. Clarification of Section 6501(c)(8)

Section 6501(c)(8) provides that in the case of information required to be reported under section 6038, 6038A, 6038B, 6046, 6046A, or 6048, the time for assessment of any tax imposed by Title 26 with respect to any event or period to which such information relates shall not expire before the date that is three years after the date on which the Secretary is furnished the information required to be reported under such section. Taxpayers have expressed uncertainty about the application of this rule in the context of a failure to properly report information required under sections 6038, 6038B, or 6046A, with respect to an interest in a foreign corporation or a foreign partnership, as applicable. The IRS and Treasury wish to clarify that if a U.S. person fails to comply with sections 6038, 6038B, or 6046A, the extended statute of limitations provided by section 6501(c)(8) shall apply only to the tax consequences related to the information required to be reported under the relevant reporting section and not to all transactions within the U.S. person's tax year at issue. For example, if a U.S. person with a calendar tax year fails to comply with section 6038 for a controlled foreign partnership's 2001 calendar tax year, section 6501(c)(8) will only extend the statute of limitations applicable to the U.S. person's 2001 tax year with respect to any tax consequences associated with the U.S. person's interest in the foreign partnership during the partnership's 2001 tax year.

H. Amendment to Final Section 6038 Foreign Corporation Regulations

In order to reduce the burden that section 6038 imposes on taxpayers, this document also amends the final regulations under section 6038 applicable to shareholders of certain foreign corporations. The regulations provide that if a United States person does not own a direct or indirect interest in the foreign corporation, but is attributed an interest from a nonresident alien, the person is not required to report under section 6038. This amendment is effective for tax years of foreign corporations ending on or after December 29, 1999.

I. Amendments to Final Section 6038B Regulations Applicable to Transfers of Property to Foreign Partnerships

On February 5, 1999, the IRS published in the **Federal Register** final regulations under section 6038B relating to the information reporting requirements for certain contributions of property by United States persons to foreign partnerships. See 64 FR 5713. This document makes several amendments to those final regulations. Each amendment either reduces the burden that section 6038B imposes on taxpayers, or does not affect the burden imposed by section 6038B.

First, the amount of information required to be submitted by a person reporting a transfer of property to a foreign partnership is reduced. Rather than submit the names and addresses of all the foreign partnership's partners, the person reporting the transfer (the transferor) must provide only the names and addresses of the United States partners that owned a ten-percent or greater direct interest in the foreign partnership during the transferor's tax year in which the reportable transfer occurred, and the names and addresses of any other United States or foreign persons that were direct partners in the partnership during that tax year and that were related to the transferor under section 6038B during that tax year. A person who transferred solely cash and who did not own a ten-percent or greater interest after the transfer is still not required to report the names and addresses of any of the foreign partnership's other partners. This amendment applies to tax years of U.S. persons required to report under section 6038B beginning on or after January 1, 2000.

Second, this document changes the time for filing Form 8865 to report a transfer to a foreign partnership in

certain instances. Currently, § 1.6038B–2(a)(5)(ii) provides that if a United States person required to report a transfer to a foreign partnership is also required to report pursuant to section 6038 for the period in which the transfer occurred, then the United States person must report the transfer on the Form 8865 completed for the partnership's tax year in which the transfer occurred. This document deletes the section 6038B/section 6038 overlap rule, so that a United States person must always report with its tax return for a particular tax year all of its section 6038B transfers that took place during that year, regardless of whether any of the transfers occurred during a period for which section 6038 reporting is also required. This amendment applies to tax years of U.S. persons required to report under section 6038B beginning on or after January 1, 2000.

The following example illustrates this amendment. Assume the tax year of *FPS,* a foreign partnership, ends on Sept 30. *US,* a United States person and calendar year taxpayer, owns a sixty-percent interest in *FPS* and therefore is a controlling fifty-percent partner of *FPS.* Accordingly, *US* must report under section 6038 with respect to *FPS.* On October 15, 2001, *US* transfers property to *FPS* in a section 721 transaction. *US* is required to report this transfer under section 6038B because *US* owns at least a ten-percent interest in the partnership immediately after the transfer. See § 1.6038B–2(a)(1)(i). Under the existing section 6038B regulations, *US* is required to report the October 15, 2001 property transfer on the Form 8865 for *FPS*'s tax year ending September 30, 2002, that will be filed with *US*'s 2002 income tax return.

Under the amendments to section 6038B contained in this document, *US* must attach to its 2001 income tax return a Form 8865 on which is reported the October 15, 2001 property transfer and information about *FPS* for *FPS*'s tax year ending September 30, 2001. Assuming *US* is also a controlling fifty-percent partner during *FPS*'s tax year ending September 30, 2002, when *US* files its 2002 income tax return, *US* must attach to that return Form 8865 on which is reported information about *FPS* for *FPS's* tax year ending September 30, 2002. *US* should not report the October 15, 2001, property transfer on the Form 8865 filed with *US*'s 2002 income tax return.

The third and final amendment to the section 6038B regulations provides an additional opportunity for United States persons to timely report certain transfers to foreign partnerships. Even if not reported in accordance with the rules provided in § 1.6038B–2(a)(5) or (j)(1) or (2), a transfer to a foreign partnership that occurred before January 1, 2000, will nevertheless be considered timely reported if the transferor reports it on a Form 8865 attached to an amended tax return for the transferor's tax year in which the transfer occurred, provided such amended return is filed no later than September 15, 2000.

Additionally, since issuing the section 6038B regulations in February 1999, certain tax-exempt organizations have contacted the IRS and Treasury to request that they be specifically excluded from the obligation under section 6038B to report their property transfers to foreign partnerships. The IRS and Treasury invite comments regarding the extent to which section 6038B reporting should be required of tax-exempt organizations.

J. Amendment to Final Section 6038B Regulations Applicable to Transfers of Property to Foreign Corporations

This document makes one amendment to the final section 6038B regulations governing the reporting requirements with respect to transfers to foreign corporations. The amendment reduces the burden that section 6038B imposes on taxpayers.

Pursuant to § 1.367(a)–3(c)(8), section 367(a) does not apply to a domestic corporation's transfer of its own stock or securities in connection with the performance of services, if the transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1). Section 1.83–6(d)(1) provides that if a shareholder of a corporation transfers property to an employee of such corporation in consideration of services performed for the corporation, the transaction is considered to be a contribution of such property to the capital of such corporation by the shareholder, and immediately thereafter a transfer of such property by the latter corporation to the employee.

The final regulations under section 6038B do not contain an exception to the reporting requirements that corresponds to the rule in § 1.367(a)–3(c)(8). Therefore, a transfer by a domestic corporation of its stock or securities to an employee of the domestic corporation's foreign subsidiary may be excluded from the application of section 367(a), yet still reportable under section 6038B. This document provides that such a transfer is not required to be reported under section 6038B if the transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000. This amendment is effective as if it had been included in TD 8770 (63 FR 33550), and therefore applies to transfers occurring on or after July 20, 1998.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations. It is hereby certified that the collections of information contained in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the number of small entities that will be required to file the form is not substantial. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting information. The principal author of these regulations is Eliana Dolgoff, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6038–2 also issued under 26 U.S.C. 6038.

Section 1.6038–3 also issued under 26 U.S.C. 6038. * * *

Par. 2. In § 1.367(a)–3, paragraph (c)(8) is amended by adding a sentence

to the end of the paragraph to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(c) * * *

(8) * * * The transfer may still, however, be reportable under section 6038B. See § 1.6038B–1(b)(2)(i)(A)(*4*) and (b)(2)(i)(B)(*4*).

* * * * *

Par. 3. Section 1.6038–2 is amended as follows:

1. A sentence is added to the end of paragraph (j)(2)(i)(C).

2. Paragraph (l) is added.

The revised and added provisions read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(C) * * * (For a rule regarding attribution from a nonresident alien, see paragraph (l) of this section).

* * * * *

(l) *Other persons excepted from filing.* For tax years of foreign corporations ending on or after December 29, 1999, any person required to furnish information under this section with respect to a foreign corporation does not have to furnish that information if the following conditions are met—

(1) Such person does not own a direct or indirect interest in the foreign corporation; and

(2) Such person is required to furnish information solely by reason of attribution of stock ownership from a nonresident alien(s) under paragraph (c) of this section.

Par. 4. Section 1.6038–3 is added to read as follows:

§ 1.6038–3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).

(a) *Persons required to make return*—(1) *Controlling fifty-percent partners.* The term *controlling fifty-percent partner* means a United States person that controlled (as defined in paragraph (b)(1) of this section) the foreign partnership at any time during the partnership's tax year (as defined in paragraph (b)(8) of this section). Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a foreign partnership during which the partnership has one or more controlling fifty-percent partners, each controlling fifty-percent partner must complete and file Form 8865, ''Return of U.S. Persons With Respect To Certain Foreign Partnerships,'' containing the information described in paragraph (g) of this section.

(2) *Controlling ten-percent partners.* If at any point during a foreign partnership's tax year (as defined in paragraph (b)(8) of this section) a United States person owned a ten-percent or greater interest in the partnership while the partnership was controlled by United States persons owning ten-percent or greater interests, such United States person is a controlling ten-percent partner. See paragraph (b)(1) of this section for the definition of control. However, a United States person is not a controlling ten-percent partner with respect to a particular foreign partnership for a particular tax year of the foreign partnership if at any point during that year the partnership had a controlling fifty-percent partner, as defined in paragraph (a)(1) of this section. Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a partnership during which the partnership has controlling ten-percent partners, each controlling ten-percent partner must complete and file Form 8865 containing the information described in paragraph (g)(1) of this section.

(3) *Separate returns for each partnership.* A United States person required to report under this paragraph (a) must file a separate Form 8865 for each foreign partnership with respect to which the person is a controlling fifty-percent partner or a controlling ten-percent partner.

(b) *Ownership determinations and definitions*—(1) *Control.* Control of a foreign partnership is ownership of more than a fifty-percent interest in the partnership.

(2) *Fifty-percent interest.* A fifty-percent interest in a partnership is an interest equal to fifty percent of the capital interest in such partnership, an interest equal to fifty percent of the profits interest in such partnership, or an interest to which fifty percent of the deductions or losses of such partnership are allocated.

(3) *Ten-percent interest.* A ten-percent interest in a partnership is an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(4) *Constructive ownership rules.* For purposes of determining an interest in a partnership, the constructive ownership rules of section 267(c) (other than section 267(c)(3)) apply, taking into account that such rules refer to corporations and not to partnerships. However, an interest will be attributed from a nonresident alien under the family attribution rules of section 267(c)(2) and (4) only if the person to whom the interest is attributed owns a direct or indirect (under the rules of 267(c)(1) or (5)) interest in the foreign partnership.

(5) *Determination of amount of interest.* Whether a person owns a fifty-percent interest, or a ten-percent interest, as described in paragraphs (b)(2) and (3) of this section, is determined for each tax year of the foreign partnership by reference to the agreement of the partners relating to such interests during that tax year.

(6) *Definition of United States person.* The term *United States person* is defined in section 7701(a)(30).

(7) *Definition of a foreign partnership.* A foreign partnership is a partnership described in section 7701(a)(5).

(8) *Tax year of a foreign partnership.* The tax year of a foreign partnership is determined under section 706.

(9) *Examples.* The rules of paragraph (a) of this section and this paragraph (b) are illustrated by the following examples:

Example 1. Sole U.S. partner does not own more than a fifty-percent interest. No United States person owns any interest (directly or constructively) in *FPS*, a foreign partnership whose tax year under section 706 is the calendar year. On January 1, 2001, *US*, a United States person with the calendar year as its tax year, contributes property to *FPS* in exchange for a 40% interest in a section 721 transaction. No United States persons acquire directly or constructively any other interests in *FPS* during *FPS*'s 2001 tax year. *US* is not a controlling fifty-percent partner during *FPS*'s 2001 tax year. *US* did not own during that tax year, either directly or constructively, more than a 50% interest in the partnership under paragraphs (b)(2) and (4) of this section. Also, *US* is not a controlling ten-percent partner; although *US* owned a 10% or greater interest, *US* persons owning at least 10% interests did not control *FPS*. Therefore, *US* does not have to file with its 2001 income tax return a Form 8865 with respect to *FPS* under section 6038. (But see section 6038B for the reporting obligations of *US* with respect to its transfer of property to *FPS* and section 6046A for the reporting obligation of *US* with respect to its acquisition of an interest in *FPS*. See also § 1.6046A–1(e)(1) regarding the overlap between sections 6038B and 6046A).

Example 2. Controlling ten-percent partners. Assume the same facts as in *Example 1.* In addition, on January 1, 2002, *US1*, a United States person unrelated to *US* and a calendar year taxpayer, purchases a 15% interest in *FPS* from a foreign partner of *FPS*. Neither *US* nor *US1* is a controlling fifty-percent partner during *FPS*'s 2002 tax

year because neither one owns more than a 50% percent interest in *FPS* during that year. However, *US* and *US1* are controlling ten-percent partners for that year because each owns at least a 10% interest (*US* owns a 40% interest and *US1* owns a 15% interest) and together they control *FPS* because collectively they own more than a 50% interest in *FPS*. As controlling ten-percent partners, under section 6038, each is required to file a Form 8865 with its 2002 income tax return. (*US1* must also report its acquisition of the 15% interest in *FPS* under section 6046A on its Form 8865 filed with its 2002 income tax return.)

Example 3. Constructive ownership rules. Assume the same facts as in *Example 2.* In addition, on January 1, 2003, *US2*, a United States person and the brother of *US*, purchases 50% of the stock of *FC*, a foreign corporation. *FC* owns a 20% interest in *FPS*. Thus, under sections 6038(e)(3) and 267(c)(1), *US2* indirectly owns a 10% interest in *FPS* (10% is *US2*'s proportionate share of *FC*'s 20% interest in *FPS*), and under sections 6038(e)(3) and 267(c)(2), *US2* is attributed *US*'s 40% interest. Additionally, *US* directly owns a 40% interest in *FPS* and is attributed *US2*'s 10% interest pursuant to section 6038(e)(3) and section 267(c)(2). Therefore, *US2* is considered to own a 50% interest (10% indirectly and 40% from *US*) in *FPS*, and *US* is considered to own a 50% interest in *FPS* (40% directly and 10% from *US2*). *FPS* has no controlling fifty-percent partners, because neither *US*, *US1*, nor *US2*, owns a greater than 50% interest. However, *US*, *US1*, and *US2* are each controlling ten-percent partners and each must file Form 8865 pursuant to section 6038 for *FPS*'s 2003 tax year ending December 31, 2003. Each must attach Form 8865 to its tax return for its 2003 tax year.

Example 4. Controlling fifty-percent partners. Assume the same facts as in *Example 3.* In addition, on June 1, 2004, *US* acquires an additional 1% direct interest in *FPS*. *US* is now a controlling fifty-percent partner of *FPS*, because *US* owns a 41% interest directly and a 10% interest constructively from *US2*. *US2* is also a controlling fifty-percent partner, because *US2* owns 10% indirectly and 41% constructively from *US*. Both *US* and *US2* are required to file Form 8865 containing all the information required to be submitted by controlling fifty-percent partners. (But see paragraph (c)(1) of this section, which contains filing exceptions when there are multiple controlling fifty-percent partners). *US1* is no longer a controlling ten-percent partner because *FPS* now has at least one controlling fifty-percent partner, and *US1* does not qualify as a controlling fifty-percent partner. Therefore, *US1* is not required to file Form 8865 under section 6038.

Example 5. Constructive ownership from a nonresident alien. US, a United States person, does not own directly or constructively an interest in *FPS*, a foreign partnership. The tax year of *FPS* is the calendar year. *NRA*, a nonresident alien, is the mother of *US*. In 2002, *NRA* acquires a 55% interest in *FPS*. Because *US* owns neither a direct nor a constructive interest in *FPS* under sections 6038(e)(3) and 267(c)(1) or (5), *NRA*'s interest is not attributed to *US* under sections 6038(e)(3) and 267(c)(2). If in 2003 *NRA* becomes a United States person, *NRA*'s interest will be attributed to *US*. However, *US* is excused from filing Form 8865 if *US* satisfies the requirements of the constructive owners exception in paragraph (c)(2) of this section. In 2003, *NRA* is a controlling fifty-percent partner and must file a Form 8865 under section 6038 for *FPS*'s 2003 tax year.

(c) *Exceptions when more than one United States person is required to file Form 8865 pursuant to section 6038*—(1) *Multiple controlling fifty-percent partners*—(i) *In general.* If, with respect to the same foreign partnership for the same tax year, more than one United States person is a controlling fifty-percent partner, then in lieu of each controlling fifty-percent partner filing a separate Form 8865, only one Form 8865 from one of the controlling fifty-percent partners is required, provided all of the requirements of paragraph (c)(1)(ii) of this section are satisfied. A person that is a controlling fifty-percent partner solely because of an interest to which deductions or losses are allocated may file the single return only if there is no United States person that is a controlling fifty-percent partner by reason of an interest in capital or profits.

(ii) *Requirements*—(A) The person undertaking the filing obligation must file Form 8865 with that person's income tax return in the manner provided by Form 8865 and the accompanying instructions. The return must contain all of the information that would have been required to be reported by this section if each controlling fifty-percent partner had filed its own Form 8865.

(B) Any controlling fifty-percent partner not filing Form 8865 must file with its income tax return a statement titled ''Controlled Foreign Partnership Reporting'' containing the following information—

(*1*) A statement that the person qualified as a controlling fifty-percent partner, but is not submitting Form 8865 pursuant to the multiple controlling fifty-percent partners exception;

(*2*) The name, address, and taxpayer identification number (if any) of the foreign partnership of which the person qualified as a controlling fifty-percent partner;

(*3*) A representation that the filing requirement has been or will be satisfied;

(*4*) The name and address of the person filing the single return;

(*5*) The Internal Revenue Service Center where the single return is required to be filed; and

(*6*) Any additional information that Form 8865 and the accompanying instructions require.

(iii) *Penalties.* If the requirements listed in paragraph (c)(1)(ii) of this section are not satisfied, a United States person that did not file a Form 8865 pursuant to this paragraph will be subject to the penalties in paragraph (k) of this section, unless the reasonable cause provision in paragraph (k)(4) of this section is satisfied.

(2) *Certain constructive owners excepted from furnishing information*—(i) *In general.* A United States person that does not own a direct interest in the foreign partnership and that is required to file Form 8865 under this section solely by reason of constructive ownership from a United States person(s) pursuant to paragraph (b)(4) of this section (an indirect partner) is not required to file Form 8865 if all of the requirements listed in paragraph (c)(2)(ii) of this section are met.

(ii) *Requirements*—(A) The United States person(s) whose interest the indirect partner constructively owns reports all the information such person(s) is required to submit under this section, unless such person also is required to file solely by reason of constructive ownership from a United States person(s) pursuant to paragraph (b)(4) of this section, or another person reports the information pursuant to paragraph (c)(1) of this section.

(B) The indirect partner files with its income tax return a statement titled ''Controlled Foreign Partnership Reporting'' containing the following information—

(*1*) A representation that the indirect partner was required to file Form 8865, but is not doing so pursuant to the constructive owners exception;

(*2*) The names and addresses of the United States persons whose interests the indirect partner constructively owns;

(*3*) The name and address of the foreign partnership with respect to which the indirect partner would have had to have filed Form 8865 but for this exception; and

(*4*) Any additional information that Form 8865 and the accompanying instructions require.

(iii) *Penalties.* A United States person that pursuant to this paragraph (c)(2) does not file a return will be subject to the penalties in paragraph (k) of this section if the requirements listed in paragraph (c)(2)(ii) of this section are not satisfied, unless such failure is due to reasonable cause, as defined in paragraph (k)(4) of this section.

(iv) *Overlap with multiple controlling fifty-percent partners exception*—(A) If a

United States person qualifies for both the exception in paragraph (c)(1) of this section and the exception in this paragraph (c)(2), such person may only utilize the multiple controlling fifty-percent partners exception in paragraph (c)(1) of this section to avoid filing Form 8865.

(B) *Example.* The following example illustrates the operation of this paragraph (c)(2)(iv):

Example. US is a U.S. citizen. *US* owns 100% of the stock of *DC*, a domestic corporation. *DC* owns a 60% direct interest in *FPS*, a foreign partnership. *DC* and *US* are the only U.S. persons that own interests directly or constructively in *FPS*. *DC* owns directly a greater than 50% interest in *FPS*. *US* constructively owns *DC*'s interest pursuant to sections 6038(e)(3) and 267(c)(1). Therefore, both *DC* and *US* are controlling fifty-percent partners. *US* qualifies for both the exception in paragraph (c)(1) of this section (multiple controlling fifty-percent partners) and the exception in paragraph (c)(2) of this section (constructive owner exception). *US* may only utilize the paragraph (c)(1) exception to avoid its filing obligation. Accordingly, *DC* may file a single Form 8865 on behalf of *US* and itself. However, that form must contain all the information that would have been submitted had *DC* and *US* each submitted a separate Form 8865.

(3) *Members of an affiliated group of corporations filing a consolidated return.* If one or more members of an affiliated group of corporations filing a consolidated return are required under section 6038 to file a Form 8865 for a particular foreign partnership, the common parent corporation may file one Form 8865 on behalf of all of the members of the group required to report under section 6038. Except with respect to group members who also qualify under the exception in paragraph (c)(2) of this section, the Form 8865 must contain all the information that would have been required to be submitted if each group member were required to file its own Form 8865.

(d) *Exception for certain trusts.* Trusts relating to state and local government employee retirement plans are not required to report under this section, unless the instructions to Form 8865 provide otherwise.

(e) *Reporting under this section not required with respect to partnerships excluded from the application of subchapter K.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in § 1.761–2(a) if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in § 1.761–2(b)(2)(i), or such partnership is deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of § 1.761–2(b)(2)(ii).

(f) *Period covered by return.* The information required under this section must be furnished for the tax year of the foreign partnership ending with or within the United States person's tax year. See section 706 for rules regarding tax years of partnerships.

(g) *Contents of return*—(1) *Information required to be submitted by controlling fifty-percent partners and controlling ten-percent partners.* All controlling fifty-percent partners and all controlling ten-percent partners must submit the following information on Form 8865 in the form and manner and to the extent prescribed by Form 8865 and its instructions—

(i) A statement of the income, gain, losses, deductions and credits allocated to the direct interest in the partnership of the person reporting under section 6038;

(ii) A list of all partnerships (foreign or domestic) in which the foreign partnership owned a direct interest, or owned a constructive interest of ten percent of more under the rules of section 267(c)(1) or (5), during the partnership's tax year for which the Form 8865 is being filed;

(iii) Information about all foreign entities that were disregarded as entities separate from their owner under §§ 301.7701–2 and 301.7701–3 that were owned by the foreign partnership during the partnership's tax year for which the Form 8865 is being filed;

(iv) A summary of the transactions that took place during the partnership's tax year between the partnership and the person filing the return, between the partnership and any other partnership of which the person filing the return is a controlling fifty-percent partner, and between the partnership and any corporation controlled (under section 6038(e)(2) and the regulations thereunder) by the person filing the return; and

(v) Any other information that Form 8865 or its accompanying instructions require to be submitted.

(2) *Additional information required to be submitted by controlling fifty-percent partners.* In addition to the information required pursuant to paragraph (g)(1) of this section, controlling fifty-percent partners must also submit the following information in the form and manner and to the extent required by Form 8865 and its instructions—

(i) A list of the names, addresses and tax identification numbers (if any) of each United States person that owned a direct interest of ten percent or more in the partnership during the partnership's tax year, and of each United States and foreign person whose interests in the partnership the controlling fifty-percent partner constructively owned under paragraph (b)(4) of this section during the partnership's tax year;

(ii) A list of transactions between the partnership and any United States person owning at the time of the transaction at least a 10-percent direct interest (as defined in paragraph (b)(3) of this section) in the foreign partnership;

(iii) A statement of the aggregate of the partners' distributive shares of items of income, gain, losses, deductions and credits;

(iv) A statement of income, gain, losses, deductions and credits allocated to each United States person holding a direct interest in the foreign partnership of ten percent or more; and

(v) Any other information Form 8865 or its accompanying instructions require controlling fifty-percent partners to submit.

(h) *Method of reporting.* Except as otherwise provided on Form 8865 or the accompanying instructions, all amounts required to be furnished on Form 8865 must be expressed in United States dollars. All statements required on or with Form 8865 pursuant to this section must be in English.

(i) *Time and place for filing return*—(1) *In general.* Form 8865 must be filed with the United States person's income tax return on or before the due date (including extensions) of that return. If the United States person is not required to file an income tax return for its tax year with which or within which the foreign partnership's tax year ends, but is required to file an information return for that year (for example, Form 1065, ''U.S. Partnership Return of Income,'' or Form 990, ''Return of Organization Exempt from Income Tax''), the Form 8865 must be filed with the United States person's information return filed on or before the due date (including extensions) of that return.

(2) *Duplicate return.* If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(j) *Overlap with section 6031*—(1) *In general.* A partner may be required to file Form 8865 under this section and the foreign partnership in which it is a partner may also be required to file a Form 1065 under section 6031(e) for the same partnership tax year. However, if a foreign partnership completes and files Form 1065, the United States partner must use a copy of the relevant

parts of Form 1065 to fulfill certain of its filing obligations under section 6038. Specifically, instead of completing the Form 8865 schedules that the person would otherwise be required to complete as a controlling fifty-percent or a controlling ten-percent partner, the person must instead attach to its Form 8865 copies of the relevant schedules from Form 1065 that the instructions to Form 8865 state are considered equivalent to schedules on Form 8865. Should a schedule on Form 8865 ask for information that is not required to be reported on the equivalent Form 1065 schedule, the partner is not required to report that information on its Form 8865 if a copy of the completed equivalent Form 1065 schedule is attached to its Form 8865. A person attaching copies of schedules from Form 1065 to its Form 8865 must still complete the parts of Form 8865 that the person is required to complete as a controlling fifty-percent partner, or a controlling ten-percent partner, and for which there is no equivalent Form 1065 schedule (for example, the first page of Form 8865).

(2) *Example.* The following example illustrates the application of this paragraph (j):

Example. US, a United States citizen, owns a 55% interest in *FPS*, a foreign partnership and calendar year taxpayer. Because US owns more than a 50% interest in *FPS, US* is a controlling fifty-percent partner of *FPS* and must file a Form 8865 with respect to *FPS.* During 2001, *FPS* earns gross income that is effectively connected with the conduct of a trade or business within the United States. Therefore, pursuant to section 6031(e)(2)(B), *FPS* must file Form 1065 for its 2001 tax year. If *FPS* completes and files Form 1065, *US* must use copies of the relevant schedules from Form 1065 to complete *US*'s Form 8865 for *FPS*'s 2001 tax year. If *FPS* instead had a September 30 tax year pursuant to section 706, then *US* must attach to its Form 1040 for *US*'s 2001 tax year a Form 8865 completed with respect to *FPS*'s tax year ending September 30, 2001. If *FPS* filed a Form 1065 for its tax year ending September 30, 2001, then *US* must use that Form 1065 to fulfill in part its reporting obligations under section 6038 by attaching the relevant schedules from the Form 1065 to *US*'s Form 8865.

(k) *Failure to comply with reporting requirement*—(1) *In general.* Any United States person required to file Form 8865 under Section 6038 and this section that fails to comply (as defined in paragraph (k)(2) of this section) with the reporting requirements of this section, will be subject to the penalties described in paragraph (k)(3) of this section.

(2) *Failure to comply.* A failure to comply is separately determined for each foreign partnership for which a United States person has a section 6038 reporting obligation. A failure to comply with the requirements of section 6038 includes the following—

(i) The failure to report at the proper time and in the proper manner any information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section.

(3) *Penalties.* A United States person that fails to comply (as defined in paragraph (k)(2) of this section) with the reporting requirements of this section must pay the following penalties, subject to the reasonable cause exception in paragraph (k)(4) of this section:

(i) *Dollar amount penalty*—(A) *$10,000 penalty.* A penalty of $10,000 shall be imposed for each tax year of each foreign partnership with respect to which a failure to comply occurs.

(B) *Increase in penalty.* If a failure to comply with the applicable reporting requirements of section 6038 and this section continues for more than 90 days after the date on which the Commissioner or the Commissioner's delegate mails notice of the failure to the United States person required to file Form 8865, the person must pay an additional penalty of $10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90-day period has expired.

(C) *Limitation.* The additional penalty imposed on any United States person by section 6038(b)(2) and paragraph (k)(3)(i)(B) of this section is limited to a maximum of $50,000 for each partnership for each tax year with respect to which the failure occurs.

(ii) *Penalty of reducing foreign tax credit*—(A) *Effect on foreign tax credit.* Failure to comply with the reporting requirements of section 6038 and this section may cause a reduction of foreign tax credits under section 901 (taxes of foreign countries and of possessions of the United States). In applying section 901 to a United States person for any tax year with or within which its foreign partnership's tax year ended, the amount of taxes paid (and deemed paid under sections 902 and 960) by the United States person will be reduced by 10 percent if the person fails to comply. However, no tax deemed paid under section 904(c) will be reduced under the provisions of this paragraph (k)(3)(ii).

(B) *Reduction for continued failure.* If a failure to comply with the reporting requirements of section 6038 and this section continues for more than 90 days after the date on which the Commissioner or the Commissioner's delegate mails notice of the failure to the person required to file Form 8865, then the amount of the reduction in paragraph (k)(3)(ii)(A) of this section will be 10 percent, plus an additional 5 percent for each 3-month period (or fraction thereof) during which the failure continues after the 90-day period has expired.

(C) *Limitation on reduction.* The amount of the reduction under paragraphs (k)(3)(ii)(A) and (B) of this section for each failure to furnish information required under this section will not exceed the greater of $10,000, or the gross income of the foreign partnership for its tax year with respect to which the failure occurred.

(D) *Offset for dollar amount penalty imposed.* The total amount of the reduction which, but for this paragraph (k)(3)(ii)(D), may be made under this paragraph (k)(3)(ii) with respect to any separate failure, may not exceed the maximum amount of the reductions that may be imposed, reduced (but not below zero) by the dollar amount penalty imposed by paragraph (k)(3)(i) of this section with respect to the failure.

(4) *Reasonable cause limitation.* The time prescribed for filing a complete Form 8865, and the beginning of the 90-day period after the Commissioner or the Commissioner's delegate mails notice under paragraphs (k)(3)(i)(B) and (ii)(B) of this section, will be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information. The United States person may show reasonable cause by providing a written statement to the Commissioner's delegate having jurisdiction over the person's return to which the Form 8865 should have been attached, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause will be determined by the Commissioner, or the Commissioner's delegate, under all the facts and circumstances.

(5) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6038, see section 6501(c)(8).

(l) *Effective date.* This section applies to tax years of a foreign partnership ending on or after December 31, 2000.

Par. 5. Section 1.6038B–1 is amended as follows:

1. The heading is revised.
2. The first three sentences of paragraph (b)(1)(i) are removed and four sentences are added in their place.
3. Paragraph (b)(2)(i)(A)(*4*) is added.
4. Paragraph (b)(2)(i)(B)(*3*) is revised.
5. Paragraph (b)(2)(i)(B)(*4*) is added.
6. Paragraph (g) is revised.

The added and revised provisions read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) * * * (1) * * * (i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of paragraph (b)(2) of this section, and certain exchanges described in section 354 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of this section and must attach the required information to Form 926, ''Return by Transferor of Property to a Foreign Corporation.'' For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see paragraphs (b)(3) and (g) of this section.

For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of § 1.367(a)-1T(c) and § 1.367(a)-3(d) shall apply with respect to a transfer described in section 367(a), and the rules of § 1.367(a)-1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a), then the U.S. person exchanging stock is not required to report under section 6038B. * * *

* * * * *

(2) * * *

(i) * * *

(A) * * *

(*4*) The transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000; or

(B) * * *

(*3*) The transferor properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer; or

(*4*) The transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1) and the fair market value of the property transferred did not exceed $100,000.

* * * * *

(g) This section applies to transfers occurring on or after July 20, 1998, except for transfers of cash made in tax years beginning on or before February 5, 1999, which are not required to be reported under section 6038B, and except for paragraph (e) of this section, which applies to transfers that are subject to §§ 1.367(e)-1(f) and 1.367(e)-2(e). See § 1.6038B–1T for transfers occurring prior to July 20, 1998. See also § 1.6038B–1T(e) in effect prior to August 9, 1999 (as contained in 26 CFR part 1 revised April 1, 1999), for transfers described in section 367(e) that are not subject to §§ 1.367(e)-1(f) and 1.367(e)-2(e).

Par. 6. Section 1.6038B–2 is amended as follows:

1. Paragraph (a)(5) is revised.
2. Paragraph (c)(4) is revised.
3. Paragraph (c)(6) is amended by removing the period at the end and adding ''; and'' in its place.
4. Paragraph (j)(1) introductory text is amended by revising the first sentence.
5. Paragraph (j)(3) is added.

The revised and added provisions read as follows:

§ 1.6038B–2 Reporting of certain transfers to foreign partnerships.

(a) * * *

(5) *Time for filing Form 8865.* The Form 8865 on which a transfer is reported must be attached to the transferor's timely filed (including extensions) income tax return for the tax year that includes the date of the transfer. If the person required to report under this section is not required to file an income tax return for its tax year during which the transfer occurred, but is required to file an information return for that year (for example, Form 1065, ''U.S. Partnership Return of Income,'' or Form 990, ''Return of Organization Exempt from Income Tax''), the person should attach the Form 8865 to its information return.

* * * * *

(c) * * *

(4) The names and addresses of the other partners in the foreign partnership, unless the transfer is solely of cash and the transferor holds less than a ten-percent interest in the transferee foreign partnership immediately after the transfer. However, for tax years of U.S. persons beginning on or after January 1, 2000, the person reporting pursuant to section 6038B (the transferor) must provide the names and addresses of each United States person that owned a ten-percent or greater direct interest in the foreign partnership during the transferor's tax year in which the transfer occurred, and the names and addresses of any other United States or foreign persons that were direct partners in the foreign partnership during that tax year and that were related to the transferor during that tax year. See paragraph (i)(4) of this section for the definition of a related person;

* * * * *

(j) * * * (1) *In general.* Except as otherwise provided in this section, this section applies to transfers made on or after January 1, 1998. * * *

* * * * *

(3) *Special rule for transfers made before January 1, 2000.* Even if not reported in accordance with the rules provided in paragraph (a)(5) of this section, or paragraph (j) (1) or (2) of this section, a transfer that occurred before January 1, 2000 will nevertheless be considered timely reported if the transferor reports it on a Form 8865 attached to an amended tax return for the transferor's tax year in which the transfer occurred, provided such amended return is filed no later than September 15, 2000.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 1.602.101, paragraph (b) is amended by revising the entries for § 1.6038–2, § 1.6038(B)–1, and § 1.6038B–2 and adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6038–2	1545–1617
* * * * *	
1.6038–3	1545–1617
* * * * *	
1.6038B–1	1545–1617
* * * * *	
1.6038B–2	1545–1617
* * * * *	

Approved: December 9, 1999.

Robert Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–32695 Filed 12–27–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8851]

RIN 1545–AK75

Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6046A of the Internal Revenue Code relating to the requirement that United States persons, in certain circumstances, file a return if they acquire or dispose of an interest in a foreign partnership, or if their proportional interest in a foreign partnership changes.

DATES: *Effective Date:* December 29, 1999.

Applicability Dates: For dates of applicability of § 1.6046A–1, see § 1.6046A–1(j).

FOR FURTHER INFORMATION CONTACT: Eliana Dolgoff, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1646. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships.''

Suggestions for reducing the burden associated with this rule should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 9, 1998, the IRS published in the **Federal Register** (63 FR 48154) proposed regulations under section 6046A. A public hearing on the proposed regulations was held on November 10, 1998, even though no requests to speak at the hearing were received. Though no comments were made at the hearing, written comments were received. After consideration of all of the written comments, the proposed regulations under section 6046A are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

Commentators requested that section 6046A reporting not be required of United States persons that are indirect partners in a partnership. For example, a United States person would not be required to report under section 6046A with respect to an interest in a foreign partnership that the person owned indirectly through another partnership. Unlike section 6038, section 6046A reporting may apply with respect to any foreign partnership, not just foreign partnerships controlled by U.S. persons. Accordingly, the IRS agrees that reporting should not be required for indirect acquisitions, dispositions, and changes in proportional foreign partnership interests, because it would be burdensome and difficult for some partners to discover and keep track of such events. Additionally, if section 6046A reporting were required for changes in indirectly owned foreign partnership interests, then a transfer of an interest in one entity in a chain of entities at the bottom of which is a foreign partnership could result in multiple, duplicative, section 6046A reporting obligations.

Thus, the final regulations substantially reduce the burden section 6046A would have imposed on taxpayers under the proposed regulations. The final regulations provide that under § 1.6046A–1(a)(1), a United States person is only required to report pursuant to section 6046A if that person has a ''reportable event.'' A person can only have a reportable event with respect to a particular foreign partnership if that person owns a direct interest in the partnership. More specifically, the United States person must acquire or dispose of a direct interest in the foreign partnership, or have a change in its direct proportional interest, in order to have a reportable event under section 6046A. See § 1.6046A–1(b)(1).

Some commentators also requested that the final regulations exempt state and local government employee retirement plans from the section 6046A reporting requirements. The final regulations provide that trusts relating to state and local government employee retirement plans are not required to report under section 6046A, unless required to do so in the instructions to Form 8865, ''Return of U.S. Persons With Respect To Certain Foreign Partnerships.'' The IRS and Treasury invite comments regarding whether the section 6046A reporting obligation should also be reduced for other tax-exempt entities.

A United States person required to report information pursuant to section 6046A must do so by completing and filing Form 8865. A final version of Form 8865 will be released prior to January 1, 2000. Taxpayers will be able to download a copy of the form and its instructions from the IRS Internet website located at www.irs.ustreas.gov.

The final regulations apply to reportable events that occur on or after January 1, 2000. Acquisitions and dispositions of foreign partnership interests, and changes in proportional foreign partnership interests, occurring before January 1, 2000, are not required to be reported under section 6046A.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

This Treasury decision finalizes a notice of proposed rulemaking published September 9, 1998. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the final regulations issued pursuant to the notice of proposed rulemaking published on September 9, 1998. It is hereby certified that this Treasury decision will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time required to complete the form and file the information required under these regulations is brief and will not have a significant impact on those small entities that are required to provide notification. Furthermore, the

number of small entities that will be required to file the form is not substantial. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these final regulations is Eliana Dolgoff of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.6046A–1 also issued under 26 U.S.C. 6046A. * * *

Par. 2. Section 1.6046A–1 is added to read as follows:

§ 1.6046A–1 Return requirement for United States persons who acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes substantially.

(a) *Return requirement*—(1) *General rule.* If a United States person has a reportable event (as defined in paragraph (b)(1) of this section) during the person's tax year, then, except as provided in paragraph (f) of this section, the United States person is required to complete and file Form 8865, ''Return of U.S. Persons With Respect To Certain Foreign Partnerships,'' containing the information described in paragraph (c) of this section.

(2) *Separate return for each partnership.* If a United States person has a reportable event with respect to an interest in more than one foreign partnership, the United States person must file a separate Form 8865 for each foreign partnership.

(b) *Definitions*—(1) *Reportable event.* There are three categories of reportable events under section 6046A: acquisitions, dispositions, and changes in proportional interests.

(i) *Acquisitions.* A United States person that acquires a foreign partnership interest has a reportable event if—

(A) The person did not own a ten-percent or greater direct interest in the partnership and as a result of the acquisition the person owns a ten-percent or greater direct interest in the partnership. For purposes of this paragraph (b)(1)(i)(A), an acquisition includes an increase in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the acquisition the person's direct interest has increased by at least a ten-percent interest.

(ii) *Dispositions.* A United States person that disposes of a foreign partnership interest has a reportable event if—

(A) The person owned a ten-percent or greater direct interest in the partnership before the disposition and as a result of the disposition the person owns less than a ten-percent direct interest. For purposes of this paragraph (b)(1)(ii)(A), a disposition includes a decrease in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the disposition the person's direct interest has decreased by at least a ten-percent interest.

(iii) *Changes in proportional interests not otherwise reportable as acquisitions or dispositions under paragraph (b)(1)(i)(A) or (b)(1)(ii)(A) of this section.* A United States person has a reportable event if, subject to paragraph (b)(2) of this section, compared to the person's direct proportional interest the last time the person had a reportable event, the person's direct proportional interest has increased or decreased by at least the equivalent of a ten-percent interest.

(2) *Special rule for foreign partnership interests owned on December 31, 1999.* If a United States person owned a ten-percent or greater direct interest in a foreign partnership on December 31, 1999, then to determine whether the person has a reportable event under paragraph (b)(1)(i)(B), (b)(1)(ii)(B), or (b)(1)(iii) of this section, the comparison should be made to the person's direct interest on December 31, 1999. Once the person has a reportable event after December 31, 1999, future comparisons should be made by reference to the last reportable event.

(3) *Change in a proportional interest.* A partner's proportional interest in a foreign partnership may change for a number of reasons, for example, the change may be caused by changes in other partners' interests resulting from a partner withdrawing from the partnership. A proportional change may also occur by operation of the partnership agreement, for example, if the partnership agreement provides that a partner's interest in profits will change on a set date or when the partnership has earned a specified amount of profits and one of those events occurs.

(4) *Ten-percent interest.* Under section 6046A(d) and this section, a *ten-percent interest* in a foreign partnership, as described in section 6038(e)(3)(C) and the regulations thereunder, means an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(5) *United States person. United States person* means a person described in section 7701(a)(30).

(6) *Foreign partnership. Foreign partnership* means any partnership that is a foreign partnership under sections 7701(a)(2) and (5).

(7) *Examples.* The rules of paragraph (a) of this section and this paragraph (b) are illustrated by the following examples:

Example 1. Acquisition of an indirect interest. FP, a foreign partnership, has two partners, *FC1* and *FC2,* both foreign corporations. *FC1* owns a 40% interest in *FP,* and *FC2* owns a 60% interest in *FP.* No United States person owns an interest in *FP,* either directly, or constructively under section 6038(e)(3)(C) and section 267(c). On January 1, 2001, *US,* a United States person and calendar year taxpayer, acquires by purchase 100% of *FC2's* stock. *US* has acquired an indirect interest of 60% in *FP.* See sections 6038(e)(3)(C) and 267(c)(1). However, *US* is not required to report the January 1, 2001 indirect acquisition under section 6046A. *US* did not own a 10% or greater direct interest in *FP* before the acquisition, and *US* does not own a 10% or greater direct interest as a result of the acquisition. (*US* must, however, comply with the reporting requirements under section 6038 (controlled foreign corporation and controlled foreign partnership reporting) with respect to *FC2* and *FP.*)

Example 2. Acquisition of direct interests. (i) Assume the same facts as *Example 1.* In addition, on June 1, 2001, *US* purchases a 5% direct interest in *FP* from *FC1. US* did not own a 10% or greater direct interest in *FP* before the acquisition. After the acquisition,

US does not own a direct interest of 10% or more. *US* owns a 10% or greater total interest (direct and indirect), but only a 5% direct interest. Therefore, *US* is not required to report the June 1, 2001, acquisition under section 6046A.

(ii) On September 1, 2001, *US* purchases a 7% direct interest in *FP* from *FC1.* The September 1, 2001 acquisition constitutes a reportable event under paragraph (b)(1)(i)(A) of this section. Before the September 1 acquisition, US did not own a 10% or greater direct interest in *FP.* After the September 1 acquisition, *US* owns a 12% direct interest, and therefore, as a result of the September 1 acquisition, *US* now owns a 10% or greater direct interest in *FP.* Consequently, *US* must report its September 1 acquisition under section 6046A on Form 8865 filed with *US's* 2001 income tax return.

(iii) On December 1, 2001, *US* acquires an additional 4% direct interest in *FP* from *FC1,* so that *US's* total direct interest has increased from 12% to 16%. This acquisition does not constitute a reportable event. Compared to *US's* direct interest when *US* last had a reportable event (12% on September 1, 2001), after acquiring the 4% interest *US's* direct interest has not increased by at least a 10% direct interest (i.e., its direct interest increased by only 4%). Therefore, *US* does not have to report the December 1, 2001, acquisition under section 6046A. On April 1, 2002, *FC2* distributes a 6% direct interest in *FP* to *US. US* now owns a 22% direct interest in *FP.* Compared to *US's* direct interest when *US* last had a reportable event (12% on September 1, 2001), after the April 1 acquisition *US's* direct interest has increased by at least a 10% interest (12% to 22%). *US* must report the April 1, 2002 acquisition on a Form 8865 attached to *US's* 2002 income tax return.

Example 3. Change in proportional interest resulting from withdrawal of a partner. Assume the same facts as *Example 3.* In addition, on January 5, 2003, *FC2* withdraws entirely from *FP.* As a result, the direct interests of *US* and *FC1* in *FP* each increase by at least the equivalent of 10% interests. Compared to *US's* direct interest the last time *US* had a reportable event (22% on April 1, 2002), *US's* direct interest has increased by at least the equivalent of a ten percent interest. Therefore, *US* has had a reportable event pursuant to paragraph (b)(1)(iii) of this section, and *US* must report the change in its interest resulting from *FC2's* withdrawal from the partnership on *US's* Form 8865 filed with *US's* 2003 tax year income tax return.

Example 4. Change in proportional interest constituting an acquisition. FP is a foreign partnership that has no United States persons as direct or constructive partners. *US* is a United States person and a calendar year taxpayer. On January 1, 2001, *US* purchases an 8% direct interest in *FP. US* is not required to report this acquisition. US did not own a 10% or greater direct interest in *FP,* and *US* does not own a 10% or greater direct interest as a result of the acquisition. On March 1, 2001, *FC,* a foreign partner of *FP,* withdraws from *FP,* and as result, *US's* direct interest in *FP* increases by a 7% interest. The increase in *US's* direct interest is considered an acquisition of an interest under paragraph (b)(1)(i)(A) of this section. *US* did not own a 10% or greater direct interest in *FP* before *FC* withdrew, and as a result of the increase in *US's* direct interest because of *FC's* withdrawal from *FP, US* now owns a 10% or greater direct interest in *FP.* Therefore, *US* must report under section 6046A the increase in *US's* direct interest resulting from the withdrawal of *FC* from *FP* on Form 8865 filed with *US's* tax return for *US's* 2001 tax year.

(c) *Content of return.* The Form 8865 that must be filed under paragraph (a)(1) of this section must contain the following information in such form and manner and to the extent that Form 8865 and its instructions prescribe—

(1) The name, address, and taxpayer identification number of the United States person required to file the return;

(2) Information about other persons (foreign or domestic) whose interests in the foreign partnership the person reporting under section 6046A is considered to own under section 6038(e)(3)(C) and section 267(c);

(3) Information about all foreign entities that were disregarded as entities separate from their owners under §§ 301.7701–2 and 301.7701–3 of this chapter that were owned by the foreign partnership during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A;

(4) For each reportable event, the date of the event, the type of event (acquisition, disposition, or change in proportional interest), and the United States person's direct percentage interest in the foreign partnership immediately before and immediately after the event;

(5) The fair market value of the interest acquired or disposed of;

(6) Information about partnerships (foreign and domestic) in which the foreign partnership owned a direct interest, or a constructive interest of ten percent or more under sections 267(c)(1) and (5) and the regulations thereunder, during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A; and

(7) Any other information required to be submitted by Form 8865 and its instructions.

(d) *Time and manner for filing returns.* The Form 8865 must be filed with the timely filed (including extensions) income tax return of the United States person for the tax year in which the reportable event occurs. If the United States person is not required to file an income tax return for its tax year in which the reportable event occurs, but is required to file an information return for that year (for example, Form 1065, ''U.S. Partnership Return of Income,'' or Form 990, ''Return of Organization Exempt from Income Tax''), the United States person should attach the Form 8865 to its information return filed for that tax year.

(e) *Duplicate returns.* If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(f) *Persons excepted from filing return*—(1) *Section 6038B overlap.* If a United States person acquires an interest in a foreign partnership as a result of a section 721 contribution required to be reported under section 6038B, and the person properly reports the contribution under section 6038B, then the United States person is not required to report the acquisition of the partnership interest under section 6046A(a) should it constitute a reportable event under paragraph (b)(1) of this section. The acquisition will still constitute a reportable event for purposes of making future comparisons pursuant to paragraphs (b)(1)(i)(B), (b)(1)(ii)(B) and (b)(1)(iii) of this section. A person that fails to properly report the section 721 contribution under section 6038B and the regulations thereunder and that fails to properly report the acquisition of the partnership interest under section 6046A may be subject to the penalties applicable to a failure to comply with the requirements of section 6038B, as well as the penalties applicable for a failure to comply with the requirements of section 6046A. See paragraph (h) of this section for more information about the penalties for failure to comply with the requirements of section 6046A.

(2) *Trusts relating to state and local government employee retirement plans.* The return requirement of section 6046A does not apply to trusts relating to state and local government employee retirement plans, unless the instructions to Form 8865 provide otherwise.

(3) *Reporting under this section not required of partnerships excluded from the application of subchapter K.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in § 1.761–2(a) in which that United States person is a partner, if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in § 1.761–2(b)(2)(i), or is deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of § 1.761–2(b)(2)(ii).

(4) *Exclusion for satellite organizations.* The return requirement of section 6046A does not apply to the International Telecommunications Satellite Organization (or a successor organization) or the International Maritime Satellite Organization (or a successor organization).

(g) *Method of reporting.* Except as otherwise provided on Form 8865, or the accompanying instructions, any amounts required to be reported under section 6046A and this section must be expressed in United States dollars, with a statement of the exchange rates used. All statements required on or with Form 8865 pursuant to this section must be in English.

(h) *Penalties for violating section 6046A.* For penalties for violating section 6046A, see sections 6679 and 7203.

(i) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6046A, see section 6501(c)(8).

(j) *Effective date.* This section applies to reportable events occurring after December 31, 1999. No reporting under section 6046A is required for reportable events occurring on or before December 31, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3 The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6046A	1545–1646
* * * * *	

Robert Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 9, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–32696 Filed 12–27–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–99–085]

RIN 2115–AA97

Safety Zone: Lake Erie—Maumee River, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River in the state of Ohio. This zone restricts the entry of vessels into the area designated for the December 31st *First Night* fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of faulty fireworks mortar rounds. Entry of vessels into this zone is prohibited unless specifically authorized by the Captain of the Port.

DATES: This rule is effective from 8:30 a.m. December 31, 1999, to 12:30 a.m. January 1, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public docket for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 a.m. and 2 p.m., Monday through Friday, except federal holidays. The Marine Safety Office is located at 234 Summit Street, Room 501, Toledo, Ohio 43604, (419) 259–6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 234 Summit Street, Room 501, Toledo, OH 43604, (419) 259–6372.

SUPPLEMENTARY INFORMATION: No notice of proposed rulemaking (NPRM) was published for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with firework displays. Due to extreme cold weather and expected lack of vessel traffic during this time frame, publication of an NPRM was deemed impractical.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the City of Toledo's First Night Fireworks. Entry into the safety zone without permission of the Captain of the Port is prohibited. The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF–FM Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979). This finding is based on the historical lack of vessel traffic at this time of year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic is expected to be non-existent due to extremely cold weather. Vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. A new temporary section 165.T09085 is added to read as follows:

§ 165.T09085 Safety Zone: Lake Erie, Maumee River, Ohio

(a) *Location:* The following area is a temporary safety zone: The waters and adjacent shoreline extending from the bow of the museum ship SS WILLIS B BOYER then NNE to the south end of the City of Toledo Streets, Harbors and Bridges Building, then SW to the red nun buoy #64, then SSE to the bow of the museum ship SS WILLIS B BOYER. A triangle as formed by positions 41°38′35″ N by 83°31′54″ W, 41°38′51″ N by 83°31′50″ W, 41°38′48″ N by 83°31′58″ W (NAD 1983).

(b) *Effective dates.* This regulation is effective between the hours of 8:30 a.m. on December 31, 1999 to 12:30 a.m. January 1, 2000, unless terminated earlier by the Captain of the Port.

(c) *Restrictions:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or the designated on-scene-patrol personnel.

Dated: December 13, 1999.

D.L. Scott,

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

[FR Doc. 99–33579 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

RIN 2115–AE84

[CGD13–98–004]

Regulated Navigation Area, Eagle Harbor, Bainbridge Island, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area on a portion of Eagle Harbor, Bainbridge Island, Washington. This regulated navigation area is required to preserve the integrity of a clean sediment cap placed over contaminated seabed as part of the remediation process at a U.S. Environmental Protection Agency (USEPA) Superfund site. It is being established at the request of the USEPA and the Washington State Department of Natural Resources. It prohibits activities that would disturb the seabed, such as anchoring, dredging, or laying cable, with the exception of EPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Wyckoff/Eagle Harbor Superfund Site. It would not affect transit or navigation of the area.

DATES: Effective: January 27, 2000.

ADDRESSES: Unless otherwise indicated, comments and material received from the public, as well as documents referred to in this preamble, are part of docket CGD13–98–004 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Paul M. Stocklin, Jr., c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 23, 1999, we published a notice of proposed rulemaking entitled Regulated Navigation Area, Eagle Harbor, Bainbridge Island, WA, in the **Federal Register** (64 FR 8764). We received two letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

The Wyckoff/Eagle Harbor Superfund site is located on the East Side of Bainbridge Island, in Central Puget Sound, Washington. The site includes a former 40-acre wood-treating facility, contaminated sediments in adjacent Eagle Harbor, and other upland sources of contamination to the harbor, including a former shipyard.

Part of the remediation process for this site consists of covering the contaminated sediments in Eagle Harbor with a layer of clean medium-to-coarse grained sand approximately one-meter (3-feet) thick. This cap is used to isolate contaminants and limit their vertical migration and release into the water column. The cap will also limit the potential for marine organisms to reach the contaminated sediment.

This rule establishes a permanent regulated navigation area, which prohibits activities such as anchoring, salvage, or dredging which would disturb the sediment cap covering the contaminated seabed. The regulation does not affect normal transit or navigation of the area. The Wyckoff facility is located on the point of land that forms the southeastern border of Eagle Harbor. The sediment cap includes approximately 2600 feet of shoreline and extends approximately 2800 feet into the harbor. This area is seldom used as an anchorage site as it is in relatively unprotected water near the mouth of the harbor.

Discussion of Comments and Changes

The Coast Guard received two letters commenting on the notice of proposed rulemaking (NPRM). The following paragraphs contain a discussion of comments received and an explanation of changes, if any, to the proposed regulations.

Comment: One comment strongly supports the prohibition of dredging and laying of cable, but opposes the prohibition of anchoring. The comment offers the opinion that the purpose of the ban on anchoring is not to preserve the integrity of the clean sediment cap, but rather to support wealthy homeowners wishing to rid the harbor of unsightly vessels. The comment states a concern the rule will establish precedent leading to additional bans on anchoring to conform to the wishes of property owners.

Response: We disagree with this comment. It has been clearly stated that the purpose of this rule is to preserve the integrity of a clean sediment cap placed over contaminated seabed as part of the remediation process at a USEPA Superfund site. The dropping and setting of anchors clearly threaten the integrity of the cap. The rule applies only to the area defined by the boundaries of the regulated navigation area. This area is in relatively unprotected water near the mouth of the harbor and seldom used as an anchorage site.

Comment: The comment states the area has been commercial property for over one hundred years and is ideally situated for the building of docks, piles to be driven and anchors to be dropped. The comment indicates the rule will make the area totally unusable and commercial use of the entire harbor would be lost. The comment adds that as the area grows, they will need more marine facilities—not less.

Response: As previously stated, the rule does not affect normal transit or navigation of the area. The rule includes a waiver process that will permit otherwise prohibited activity if the EPA and the Washington State Department of Natural Resources determine the proposed activity can be performed in a manner that ensures the integrity of the sediment cap. The need for placing and preserving the clean sediment cap has been well established by the USEPA and supported by the Washington State Department of Natural Resources. The listing of the site as a Superfund site and its suitability for future commercial development are outside the scope of this rulemaking and will not be addressed.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed rule would not affect normal transit or navigation of the area and the only property involved is that of the former Wyckoff facility. The area is not a designated anchorage ground nor special anchorage area and was seldom used as an anchorage site as it is in relatively unprotected water immediately adjacent the harbor entrance.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612.), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to engage in one of the prohibited activities in the regulated area. This proposed rule would not affect transit or navigation of the area. Rather, it would prohibit activities that would disturb the seabed, such as anchoring, dredging, or laying cable. The area is not a designated anchorage ground nor special anchorage area and was seldom used as an anchorage site as it is relatively unprotected water immediately adjacent the harbor entrance.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environmental Analysis

The Coast Guard considered the environmental impact of this rule and has concluded that, under figure 2–1, paragraph (34)(g), of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for regulations establishing Regulated Navigation Areas. This particular regulated navigation area is proposed for the purpose of preserving the remediation efforts at a USEPA Superfund Site. The rule itself will not cause nor introduce any environmental impacts and will be transparent in all regards except for prohibiting activities which could disturb the seabed within the established boundaries of the site.

The USEPA has determined that there will be no significant environmental impact arising from the creation of a RNA designed to protect the sediment cap. The actual placement of the cap in Eagle Harbor was determined by USEPA to provide an environmental benefit to the area by allowing organisms to colonize the clean sediments of the cap (''The Proposed Plan for Cleanup of Eagle Harbor''—December 16, 1991). USEPA's authority to place the cap is expressed in a publicly available document known as a ''Removal Action Memorandum'' dated June 15, 1993, and additional information is available at the Marine Safety Office at the address under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new § 165.1309 is added to read as follows:

§ 165.1309 Eagle Harbor, Bainbridge Island, WA.

(a) *Regulated area.* A regulated navigation area is established on that portion of Eagle Harbor bounded by a line beginning at: 47° 36′ 56″ N, 122° 30′ 36″ W; thence to 47° 37′ 11″ N, 122° 30′ 36″ W; thence to 47° 37′ 25″ N, 122° 30′ 17″ W; thence to 47° 37′ 24″ N, 122° 30′ 02″ W; thence to 47° 37′ 16″ N, 122° 29′ 55″ W; thence to 47° 37′ 03″ N, 122° 30′ 02″ W; thence returning along the shoreline to point of origin. [Datum NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the seabed in the designated area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port, Puget Sound, upon advice from the U.S. EPA Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if it is determined that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests should be submitted in triplicate, to facilitate review by U.S. EPA, Coast Guard, and Washington State Agencies. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Wyckoff/Eagle Harbor Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: December 15, 1999.

Paul M. Blayney,

Rear Admiral, USCG 13th District Commander.

[FR Doc. 99–33581 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[IN110–1a, FRL–6483–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revised source specific lead (Pb) emissions limits for the Hammond Group—Halstab Division (Halstab) facility located in Hammond, Indiana which is located in Lake County. This requested revision to the Indiana State Implementation Plan (SIP) was submitted by the State of Indiana on May 18, 1999.

DATES: This rule is effective on February 28, 2000, unless EPA receives adverse written comments by January 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the material submitted by the State in support of this request are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

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

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I. What Is the Background for This Action?

Halstab manufactures lead stabilizers for use in plastics, wire and cable applications. Halstab requested a rule change from the currently applicable SIP-approved lead emission limits. The current emission limits are codified at title 326 of the Indiana Administrative Code, Article 15, Rule 1, Section 2 (326 IAC 15–1–2). The current rule limits emissions by regulating the allowable pounds of lead per hour, as well as the hours of operation per quarter, at 15 emission points: stacks s–1, and s–4 through s–17. In order to meet its current marketing demands, Halstab requested that Indiana revise Halstab's emission limits by removing all the operating hour restrictions while lowering the hourly emission limits.

II. How Will the Lead Emission Rate Reductions Be Achieved?

Halstab is installing high efficiency particulate air (HEPA) filters at all emission points listed in the proposed SIP in order to lower its emissions.

III. How do the Requested Emission Limits Compare to the Current Federally Approved Emission Limits?

The current federally-approved lead emission rates range from a high of 1 pound per hour to a low of 0.12 pound per hour at the various listed emission points. The proposed lead rule incorporates limits at two additional emission points which range from a high of 0.07 pounds per hour to a low of 0.03 pounds per hour. Total annual allowable lead emissions under the current SIP requirements are 31,546 pounds. Under the revised requirement, Halstab's actual annual lead emissions should not exceed 6,832.8 pounds.

IV. How Will the Revised Emission Limits Affect Air Quality?

Indiana required an air quality modeling demonstration as a part of this rule change request. The modeling analysis used was the Industrial Source Complex Long Term (ISCLT) Model Version 96113. Halstab modeled a series of discrete receptor grids along with three discrete receptors representing the three lead monitors in the area. Halstab took background concentrations from the closest lead monitor which is located at 2325 Sumner Street in Hammond, Indiana. The modeled concentrations of the proposed allowables added with the background data are below the lead National Ambient Air Quality Standards (NAAQS). This demonstrated that the decreased allowable emission limitations along with the removal of all operating hour restrictions at Halstab should not result in a violation of the lead NAAQS.

V. EPA Rulemaking Action

EPA has examined the State's SIP revision request and the supporting documentation provided by the State. Based on the merits of the information supplied, EPA approves the incorporation of 326 IAC 15–1–2(a)(7)(A) through (G) into the Indiana SIP.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by January 27, 2000. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 28, 2000.

VI. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612 (Federalism) and E.O. 12875 (Enhancing the Intergovernmental Partnership). E.O. 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the E.O. to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. 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 E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a

separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 February 28, 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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: November 19, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 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 P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(129) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c)* * *

(129) On May 18, 1999, the Indiana Department of Environmental Management submitted revised site-specific lead emission limits for Hammond Group—Halstab Division located in Hammond (Lake County), Indiana. The revised emission limits are expressed as pounds-per-hour limits ranging from 0.04 to 0.07 applicable to sixteen separate emissions points. The revised emission limits will result in the reduction of total allowable lead emissions from 31,546 pounds per year as provided for in the current federally-approved State Implementation Plan to 6,832.8 pounds per year.

(i) Incorporation by reference.

(A) Indiana Administrative Code 326: Air Pollution Control Board, Article 15 Lead, Rule 1 Lead Emissions

Limitations, Section 2—Source Specific Provisions, subsection (a), subdivision 7, clauses (A) through (G). Amended at 22 Indiana Register 1427, effective February 5, 1999.

[FR Doc. 99–33025 Filed 12–27–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE 047–1024a, MD 089–3042a, PA 140–4092a, VA 104–5043a; FRL–6483–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, Pennsylvania, and Virginia; Approval of National Low Emission Vehicle Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the Commonwealths of Pennsylvania and Virginia, and by the States of Maryland and Delaware. These SIP revisions formalize each of the respective State's commitments to accept sales of motor vehicles that comply with the requirements of the National Low Emission Vehicle (National LEV) program. Delaware originally submitted its National LEV SIP revision to EPA on February 25, 1999, but later revised the SIP on September 1, 1999 to supercede the prior submittal. Maryland submitted its National LEV SIP revision to EPA on March 3, 1999, and amended the plan on March 24, 1999. Pennsylvania submitted its National LEV SIP revision to EPA on January 8, 1999. Virginia submitted its National LEV SIP revision to EPA on May 27, 1999.

Delaware, Maryland, Pennsylvania, and Virginia have agreed to the sale of National LEV compliant vehicles within their borders, in lieu of implementing a California LEV program. Under the National LEV Program, auto manufacturers have agreed to sell cleaner vehicles meeting the National LEV standards throughout these states for the duration of the manufacturers' commitments to the National LEV Program. A SIP revision from each participating state is required as part of the agreement between states and automobile manufacturers to ensure the continuation of the National LEV Program to supply clean cars throughout most of the country. The sale of vehicles complying with National LEV program standards began with 1999 model year vehicles in Northeast states, and will extend to other states outside the Northeast beginning with 2001 model year vehicles.

DATES: This rule is effective on February 28, 2000 without further notice, unless EPA receives adverse comment by January 27, 2000. If we receive such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of state-specific materials may be reviewed at each respective state's offices, at: the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19903; the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; or at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, or by e-mail at Rehn.Brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Low Emission Vehicle (National LEV) program is a voluntary, nationwide clean car program, designed to reduce ground level ozone (or smog) and other air pollution emitted from newly manufactured motor vehicles. On June 6, 1997 (62 FR 31192) and on January 7, 1998 (63 FR 926), the Environmental Protection Agency (EPA) promulgated rules outlining the framework for the National LEV program. These National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA could otherwise mandate under the authority of the Clean Air Act. The regulations provided that the program would come into effect only if Northeast states and auto manufacturers agreed to participate. On March 9, 1998 (63 FR 11374), EPA published a finding that the program was in effect. Nine northeastern states (Connecticut, Delaware, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, and the District of Columbia) and 23 auto manufacturers (BMW, Chrysler, Fiat, Ford, General Motors, Honda, Hyundai, Isuzu, Jaguar, Kia, Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Nissan, Porsche, Rolls-Royce, Saab, Subaru, Suzuki, Toyota, Volkswagon, and Volvo) had opted to participate in the National LEV program. Once in effect, the National LEV Program became enforceable in the same manner as any other Federal new motor vehicle emission control program. The National LEV Program will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of Federal and California new motor vehicle standards and test procedures, which enables manufacturers to move towards the design and testing of vehicles to satisfy one set of nationwide standards. The National LEV Program demonstrates how cooperative partnership efforts can produce a smarter, cheaper emissions control program, which reduces regulatory burden while increasing protection of the environment and public health.

The National LEV Program will result in substantial reductions in non-methane organic gases (NMOG) and nitrous oxides (NOx), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently. National LEV vehicles were estimated to cost an additional $76 above the price of vehicles otherwise required today, but the actual per vehicle cost is now expected to be even lower, due to factors such as economies of scale and historical trends related to emission control costs. This predicted incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV Program will help ozone nonattainment areas across the country improve their air quality, as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to take effect, and will remain in effect, only if the

participating auto manufacturers and Northeastern States commit to the program and abide by their commitments. The states and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the state commitments are to be made through SIP revisions that incorporate those state commitments to National LEV into state regulations. EPA will then take rulemaking action to approve each state's regulation into its respective federally-enforceable SIP. The National LEV regulations laid out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve that revision as adequately committing the state to the National LEV Program. In today's action, EPA is approving the National LEV SIP revisions for Delaware, Maryland, Pennsylvania and Virginia as adequately committing those states to the program. In the near future, EPA expects to take similar actions for the remaining Northeast states that have elected to join the National LEV Program.

II. EPA's Evaluation of the States' Submittals

At present, Delaware, Maryland, and Virginia have not exercised their option, pursuant to section 177 of the Clean Air Act, to adopt state standards to regulate new motor vehicles identical to California's LEV program. Pennsylvania has adopted California's LEV program concurrently with its National LEV Program regulation. Adopted by the Commonwealth under section 177 of the Clean Air Act and entitled the ''Pennsylvania's Clean Vehicle program'', this program serves as a ''backstop'' measure to the National LEV Program. Pennsylvania's Clean Vehicle program would take effect in the event that the National LEV program terminates due to opt-out by auto manufacturers or participating states, or at the conclusion of the NLEV program.

Delaware, Maryland, Pennsylvania, and Virginia have each adopted National LEV regulations that provide that for the duration of each respective State's participation in the National LEV program, manufacturers may comply with National LEV or equally stringent mandatory Federal standards in lieu of compliance with any state-adopted California LEV program pursuant to section 177 of the Clean Air Act. Delaware, Maryland, Pennsylvania, and Virginia have each adopted regulations that accept National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. Each state's regulation provides for participation in National LEV extends until model year 2006. However, if by December 15, 2000, EPA does not adopt mandatory national standards at least as stringent as the National LEV standards that apply to new motor vehicles beginning in model year 2004, 2005 or 2006, the states' participation in the National LEV Program would extend only until model year 2004. Through their regulations, which were submitted to EPA as SIP revisions, Delaware, Maryland, Pennsylvania, and Virginia have adequately committed to the National LEV Program, as provided in the final National LEV rule.

EPA's final National LEV rule stated that if states submit SIP revisions containing regulatory language substantively identical to the language in EPA's regulation without additional conditions, and if such submissions otherwise meet the Clean Air Act requirements for approvable SIP submissions, EPA would not need to conduct notice-and-comment rulemaking to approve those SIP revisions. In its National LEV rulemaking, EPA provided full opportunity for public comment on the language to be contained in each state's subsequent SIP revision. Thus, as discussed in more detail in the EPA National LEV final rule, the requirements for EPA approval are easily verified objective criteria (see 63 FR 936, January 7, 1998). While we could appropriately approve the submissions from Delaware, Maryland, Pennsylvania, and Virginia without providing for additional notice and requesting comments, we have nonetheless decided to take this action in the form of a direct final rulemaking, which allows an opportunity for further public comment. In this instance, EPA is not under a timing constraint that would support a shorter rulemaking process, and thus we have decided there was no need to deviate from the Agency's usual procedures for SIP approvals.

III. Final Action

EPA has evaluated the SIP revisions submitted by Delaware, Maryland, Pennsylvania, and Virginia, the Agency has determined that these SIP revisions are consistent with the EPA National LEV regulations and satisfy the general SIP approval requirements of section 110 of the Clean Air Act. Therefore, EPA is approving the Delaware low emission vehicle rule submitted on September 1, 1999 into the Delaware SIP. EPA is approving the Maryland low emission vehicle rule submitted on March 3, 1999 (as amended on March 24, 1999) into the Maryland SIP. EPA is approving the Pennsylvania's National LEV rule that was submitted to EPA on January 8, 1999 into the Pennsylvania SIP. Finally, EPA is approving Virginia's low emission vehicle rule submitted to EPA on May 27, 1999 into the Virginia SIP.

EPA is publishing this action 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 if adverse comments are filed. This rule will be effective February 28, 2000 without further notice, unless the Agency receives adverse comment by January 27, 2000.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments received in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting 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 review under Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have

federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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 the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and; (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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 a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so

would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this approval action for four states' National Low Emission Programs must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 18, 1999.

Alvin R. Morris,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

2. In § 52.420, the entry for Regulation 40, Delaware's National Low Emission Program, in the table in paragraph (c) is added in numerical order to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Regulation No. 40—National Low Emission Vehicle Program				
Section 1	Applicability	October 11, 1999	December 28, 1999	Issued on September 1, 1999, by Secretary's Order No. 99–A–0046.
Section 2	Definitions	October 11, 1999	December 28, 1999	Issued on September 1, 1999, by Secretary's Order No. 99–A–0046.
Section 3	Program Participation	October 11, 1999	December 28, 1999	Issued on September 1, 1999, by Secretary's Order No. 99–A–0046.

Subpart V—Maryland

3. Section 52.1070 is amended by adding paragraph (c)(146) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(146) Revisions to the Maryland Regulations, through the addition of COMAR 26.11.20.04, adopting the National Low Emission Vehicle Program. This revision was submitted on March 3, 1999 by the Maryland Department of the Environment, and was amended on March 24, 1999:

(i) Incorporation by reference.

(A) Letter of March 3, 1999 from the Maryland Department of the Environment transmitting a revision to the Maryland State Implementation Plan for a National Low Emission Vehicle program.

(B) Letter of March 24, 1999 from the Maryland Department of the Environment revising Maryland's State Implementation Plan for a National Low Emission Vehicle program.

(C) Maryland regulation COMAR 26.11.20.04, entitled ''National Low Emission Vehicle Program'', effective March 22, 1999.

(ii) Additional Material.—Remainder of March 3, 1999 and March 24, 1999 submittals pertaining to COMAR 26.11.20.04.

Subpart NN—Pennsylvania

4. Section 52.2020 is amended by adding paragraph (c)(141) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(141) Revisions to the Pennsylvania Regulations for a Clean Vehicles Program regulation submitted on January 8, 1999 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of January 8, 1999 from the Department of Environmental Protection transmitting the National Low Emission Vehicles Program, and a Pennsylvania Clean Vehicles Program as a ''backstop'' to the National Low Emissions Vehicle Program.

(B) Amendments to Chapter 121 of Title 21 of the Pennsylvania Code, effective on December 5, 1998, to include definitions for the following terms: CARB, CARB Executive Order, California Code of Regulations, Dealer, Debit, Emergency Vehicle, Fleet Average, GVWR, LDT, LDV, Model Year, Motor Vehicle, Motor Vehicle Manufacturer, NLEV, NLEV Program, NMOG, New Motor Vehicle / New Light-Duty Vehicle, Offset Vehicle, Passenger Car, Ultimate Purchaser, Zero-Emission Vehicle

(C) Amendments to Chapter 126 of Title 21 of the Pennsylvania Code, effective December 5, 1998, to add new sections: 126.401, 126.402, 126.411, 126.412, 126.413, 126.421, 126.422, 126.423, 126.424, 126.425, 126.431, 126.432, and 126.441.

(ii) Additional Material.—Remainder of January 8, 1999 submittal pertaining to the National Low Emissions Vehicle Program and the Pennsylvania Clean Vehicles Program.

Subpart VV—Virginia

5. Section 52.2420 is amended by adding paragraph (c)(135) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(135) Revisions to the Virginia Regulations for the adoption of the National Low Emission Vehicle Program

submitted on May 27, 1999 by the Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of May 27, 1999 from the Department of Environmental Quality transmitting Virginia's plan for adoption of a National Low Emission Vehicle Program.

(B) Regulation for a National Low Emission Program, codified at 9 VAC 5–200 of the Virginia Code, effective on April 14, 1999, to add: 9 VAC 5–200–10, Paragraphs A, B, and C; and 9 VAC 5–200–20; and 9 VAC 5–200–30.

(ii) Additional Material.—Remainder of May 27, 1999 submittal pertaining to the National Low Emissions Vehicle Program.

[FR Doc. 99–33027 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6514–5]

Section 112(l) Approval of the State of Florida's Rule Adjustment to the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 9, 1999, the State of Florida, through the Florida Department of Environmental Protection (FDEP) submitted a request for adjustment of the ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities,'' (PERC) National Emission Standards for Hazardous Air Pollutants (NESHAP). This Request was submitted through the procedures outlined in 40 CFR 63.92 and 63.91 of section 112 of the Clean Air Act as Amended in 1990. The requested adjustment by FDEP would allow the Periodic Startup, Shutdown, and Malfunction reports as required in 40 CFR 63.10(d)(5) of the General Provisions, to be retained on site at PERC NESHAP affected facility instead of submitting them to the delegated agency. EPA has reviewed this 112(l) adjustment request, and determined that the State has satisfied the necessary criteria of a complete submittal as specified in §§ 63.92 and 63.91. EPA believes this 112(l) adjustment request by the State of Florida is approvable due to the State's consistent compliance and inspection rate of these specific area source PERC NESHAP affected facilities. EPA is hereby granting the State of Florida the authority to adjust its Periodic Startup, Shutdown, and Malfunction reports, to accommodate area source PERC NESHAP affected facilities through 40 CFR 63.92(b)(3)(viii) and 63.10(f)(2). Today's action is taken to modify the delegated PERC NESHAP to the State of Florida to accommodate sources classified by this PERC NESHAP as affected area sources as listed in 58 FR 49345 (September 22, 1993).

DATES: This direct final rule modification is effective February 28, 2000 without further notice, unless EPA receives adverse comment by January 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104 ; ceron.leonardo@epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303, Phone: (404) 562–9129; ceron.leonardo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 1996, The State of Florida notified the EPA of its adoption by reference of the PERC NESHAP located at 40 CFR 63.320, and the applicable sections of 40 CFR 63.1, (the General Provisions) both of which were adopted into the Florida Administrative Code (F.A.C.) 62–213.300(3)(1), and 62–204.800. Subsequently on February 11, 1998, the State of Florida, through the FDEP submitted a request for an adjustment of the PERC NESHAP through the procedures outlined in 40 CFR 63.92 and 63.91 of section 112 of the Clean Air Act as Amended in 1990. Based on discussions between the EPA Region 4 and FDEP, the State of Florida revised its initial request for adjustment and resubmitted a request on April 9, 1999. The revised 112(l) request was reviewed and deemed complete based on the criteria listed in 40 CFR 63.92 and 63.91. This adjustment will allow area source PERC NESHAP affected facilities the flexibility of retaining periodic startup, shutdown and malfunction reports required in 40 CFR 63.10(d)(5), on site, instead of submitting them on a periodic or biannual basis. However, this adjustment does not exempt or delay any Title V recordkeeping and compliance reporting requirements required of all Title V and general permit sources in the State of Florida. This regulatory flexibility for area source PERC NESHAP affected facilities is consistent with EPA's requirements for area sources subject to 40 CFR 63.340, 63.360, and 63.460. Accordingly, this determination is consistent with the applicability of the general provisions to 40 CFR 63.340, 63.360, and 63.460 which specifically exempt § 63.10(d)(5). EPA's decision to approve this adjustment is further supported by FDEP's compliance effectiveness at area source PERC NESHAP affected facilities within the State of Florida. The State of Florida has provided EPA with a letter submitted on August 20, 1999. The letter submitted by FDEP provided evidence of the State wide compliance rate for the area source PERC NESHAP affected facilities, of at least 82%, based on compliance inspections by FDEP. This compliance rate has consistently improved since 1996 from 61%, to 1997 with 77%, to 1998 with 82%. The compliance rate is based on the percentage of ''in-compliance'' inspection reports versa the ''non-compliance'' inspection reports by FDEP personnel on a 12 month basis. Compliance inspections are the most effective route to assert the requirements of NESHAPs as required in 40 CFR 63.320. The physical inspection of records and operations at each affected facility permitted by the State of Florida has allowed FDEP to achieve the above stated level of compliance. According to the State of Florida, inspections of PERC NESHAP affected facilities will continue to provide an increasing compliance rate and a verification of the periodic reporting which will be maintained on site in lieu of the flexibility provided by this adjustment today. The NESHAP adjustment provided herein will also assist small businesses in the reduction of cost associated with submitting biannual reports for the associated regulatory requirements, by allowing affected facilities to maintain records on site. Based on the review of the above documented request for flexibility to area source PERC NESHAP affected facilities, the State of Florida, through the FDEP, has satisfied all the requirements of 40 CFR 63.91 and 63.92. EPA therefore, is granting approval of this 112(l) request through the authority

listed in §§ 63.92(b)(3)(viii) and 63.10(f)(2). The approved 112(l) adjustment is adopted by the State of Florida in F.A.C. 62–213.300(3)(1).

II. Final Action

In this action, EPA is approving modifications to provisions of Florida's delegated PERC requirements for dry cleaning facilities as they pertain to periodic startup, shutdown, and malfunction reports listed in 40 CFR 63.1 for area source PERC NESHAP affected facilities within the State of Florida.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 112(l) revision should adverse comments be filed. This rule will be effective February 28, 2000 without further notice unless the Agency receives adverse comments by January 27, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 28, 2000 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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 Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 section 112(l) approvals of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the section 112(l) 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.

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 February 28, 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 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 3, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–33329 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. H–29]

RIN 3090–AF39

Criteria for Reporting Excess Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Temporary regulation; extension of expiration date.

SUMMARY: The General Services Administration (GSA) is extending Federal Property Management Regulations provisions regarding criteria for reporting excess personal property to GSA.

DATES: Effective December 28, 1999, the expiration date of the temporary regulations published at 62 FR 2022 is extended through July 31, 2000.

SUPPLEMENTARY INFORMATION: FPMR Temporary Regulation H–29 was published in the Federal Register on January 15, 1997, 62 FR 2022. The expiration date of the temporary regulation was January 15, 1998. A supplement published in the **Federal Register** on December 31, 1997, 62 FR 68216, extended the expiration date through December 31, 1998. Another supplement was published in the **Federal Register** on January 8, 1999, 64 FR 1139, that extended the expiration date through January 15, 2000. This supplement further extends the expiration date through July 31, 2000.

List of Subjects in 41 CFR Chapter 101

Archives and records, Computer technology, Government procurement, Property management, Records management, Telecommunications. Federal information processing resources activities.

Therefore the expiration date for Temporary Regulation H–29 amending the appendix to subchapter H of chapter 101 and published at 62 FR 2022, January 15, 1997, extended until January 15, 1999 at 62 FR 68216, and January 15, 2000 at 64 FR 1139, is further extended through July 31, 2000.

Dated: December 15, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–33421 Filed 12–27–99; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 99–2788]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document contains an editorial amendment to the Commission's regulations concerning ex parte presentations. It consolidates amendments made in two separate Commission actions into a corrected text.

DATES: Effective January 28, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is the full text of the Order of the Commission's Managing Director, DA 99–2788, adopted on December 14, 1999, and released December 17, 1999.

1. By this order, we correct the language of 47 CFR 1.1202(d)(2) of the Commission's ex parte rules. This provision was amended by two separate actions of the Commission. The first was the Commission's Report and Order in WT Docket No. 96–198, FCC 99–181, released September 29, 1999. Notice of this action was published in the **Federal Register** at 64 FR 63235 (Nov. 19, 1999), to become effective on January 28, 2000. The second was the Commission's Memorandum Opinion and Order in GC Docket No. 95–21, FCC 99–322, released November 9, 1999. Notice of this second action was published in the **Federal Register** at 64 FR 68946 (Dec. 9, 1999), to become effective on January 10, 2000. Each of the two actions fails to take into account the amendment made by the other. To cure this oversight, we will amend the rule to consolidate the amendments made by the two actions into a single corrected text.

2. Additionally, the text of the rule set forth in 64 FR 63235 contains a typographical error. That text refers to §§ 6.17 and 7.17 instead of the correct sections, 6.21 and 7.21. We will make an appropriate correction.

3. Pursuant to the authority delegated under 47 CFR 0.231(b), 47 CFR 1 IS AMENDED as set forth effective on January 28, 2000 and substituting for and superseding the corresponding

amendment to part 1 contained in 64 FR 63235 otherwise effective on that date.

Andrew S. Fishel,

Managing Director.

Rule Change

Part 1 of Title 47 of the Code of Federal regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), and 309.

2. Section 1.1202 (d)(2) is revised to read as follows:

§ 1.1202 Definitions.

* * * * * *

(d) * * *

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter;

* * * * *

[FR Doc. 99–33470 Filed 12–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[CI Docket 98–69; FCC 99–326]

Importation of Devices Capable of Causing Harmful Interference

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules in order to prevent the importation of illegal radio frequency (RF) devices. It also eliminates the need for importers to file a duplicate FCC Form 740 with the FCC when importing devices into the United States.

EFFECTIVE DATE: February 28, 2000.

FOR FURTHER INFORMATION CONTACT: David Sturdivant, Enforcement Bureau, 202–418–1160.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Report and Order,* CI Docket 98–69, adopted October 29, 1999 and released November 5, 1999.

The full text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, D.C. 20036; phone (202) 857–3800, facsimile (202) 857–3805.

Synopsis of the Second Report and Order

The Second Report and Order amends the Commission's rules concerning the importation of devices capable of causing harmful interference. These rule amendments simplify the process importers use to import radio frequency devices into the United States.

The Federal Communications Commission (FCC) requires that radio frequency (RF) devices imported into the United States comply with FCC rules. The FCC released an *Order and Notice of Proposed Rule Making* [63 FR 53901] on June 5, 1998. This document sought to clarify rule language that could allow the importation of illegal RF devices. The FCC, working in conjugation with the United States Customs Service, help to prevent the importation of illegal RF devices. The FCC Form 740 is used by importers to declare that imported RF devices comply with applicable FCC technical requirements. This form, along with its electronic equivalent, is filed with the U.S. Customs Service.

In order to curtail abuse of the import-for-export provision of the Commission's rules, we have modified the rule to prevent the entry of illegal RF devices. This rule allows the importation of devices that do not have FCC authorization under the condition the devices will be exported. A provision of the rule prevented a device from being marketed or offered for sale for use in the United States. It was the Commission experience that some unscrupulous importers would take advantage of this provision in order to import and sell illegal RF devices to customers for use in the United States. By using simple collusion to exploit the rule provision, the importer could increase his likelihood of avoiding punitive action from the Commission. Our amended import-for-export rule will continue to allow non-authorized devices to enter the U.S. solely for export but does not allow the devices to be offered for sale in the U.S. The rule does make an exemption for cellular phones and similar telephone devices that operate on standards not used in the U.S. and, as a result, are unable to function in the U.S. These types of devices may continue to be imported and marketed for use outside of the U.S. This rule amendment makes it less problematic for importers, U.S. Customs officials and FCC officials, to determine when importation of a radio frequency device is illegal. It will also minimize any effect on vendors that legitimately import devices for export.

Our rule amendments also streamline the declaration process for importers unable to file the FCC Form 740 electronically. Due to the successful implementation of U.S. Custom's electronic filing system, the FCC will eliminate the requirement for importers to file a duplicate FCC Form 740 with the Commission when they are unable to file electronically. Although the majority of FCC Form 740 filings occur electronically via U.S. Custom's electronic filing system, importers must currently file a paper FCC Form 740 with U.S. Customs and with the FCC when they are unable to use the electronic system. FCC Form 740 information is available to the FCC via the U.S. Customs Service upon request. Thus, requiring the duplicative filing of the FCC Form 740 with the FCC puts an unnecessary burden on the importer. We will no longer require an importer to file the FCC Form 740 with the FCC when an importer is unable to use the electronic system provided by the U.S. Customs Service. Importers will continue to submit the FCC Form 740 to the U.S. Customs Service.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the *Second Report and Order* contains a final regulatory flexibility analysis. No comments were submitted in response to the Initial Regulatory Flexibility Analysis. The Commission does not anticipate any adverse economic impact on small business entities resulting from these rule amendments. This *Second Report and Order* will reduce the burden on small entities. This item eliminates the duplicative filing of the FCC Form 740 and, as a result, should reduce administrative overhead, such as processing and mailing costs for small businesses. Secondly, revisions to the rule to amend language in order to improve enforcement by prohibiting entry of devices that are not approved for use in the United States is essential. The Commission had originally

intended to delete the words ''for use'' from § 2.1204(a)(5). Instead, after comment on this proposed revision, the Commission deleted the words ''for use'' but added a qualifier to allow for the importation of foreign standard cellular handsets that are incapable of operating in the United States. It is believed that this amendment of the rule both closes the ''loophole'' and allows businesses to conduct business such as the importing and selling of cellular handsets to the United States.

Legal Basis

Pursuant to the authority contained in sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302a, 303(b), 303(f), 303(g), 303(r), part 2, subpart K, §§ 2.1204(a)(5), 2.1205(a), 47 CFR 2.1204(a)(5) and 2.1205(a) are amended.

List of Subjects in 47 CFR Part 2

Imports.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 2 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 is amended to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.1204 is revised by amending paragraph (a)(5) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(5) The radio frequency device is being imported solely for export. The device will not be marketed or offered for sale in the U.S., except:

(i) If the device is a foreign standard cellular phone solely capable of functioning outside the U.S.

(ii) If the device is a multi-mode wireless handset that has been certified under the Commission's rules and a component (or components) of the handset is a foreign standard cellular phone solely capable of functioning outside the U.S.

* * * * *

3. Section 2.1205 is revised by removing the note and revising paragraph (a) to read as follows:

§ 2.1205 Filing of required declaration.

(a) For points of entry where electronic filing with Customs has not been implemented, use FCC Form 740 to provide the needed information and declarations. Attach a copy of the completed FCC Form 740 to the Customs entry papers.

* * * * *

[FR Doc. 99–33582 Filed 12–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 2000

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2000. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), January 20, 2000, through 2400 hours, A.l.t., June 30, 2000. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 26, 2000.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries appear at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also may not exceed red king crab bycatch rate standards specified for the BSAI yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 2000 effective from January 20, 2000, through June 30, 2000.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(1) Previous years' average observed bycatch rates;

(2) Immediately preceding season's average observed bycatch rates;

(3) The bycatch allowances and associated fishery closures specified under §§ 679.20 and 675.21;

(4) Anticipated groundfish harvests;

(5) Anticipated seasonal distribution of fishing effort for groundfish; and

(6) Other information and criteria deemed relevant by the Regional Administrator.

At its October 1999 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1994–1999. Based on this and other information presented here, the Council recommended halibut and red king crab bycatch rate standards for the first half of 2000. These standards are unchanged from those specified for the past 5 years. The Council's recommended bycatch rate standards are listed in Table 1 to this part.

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2000 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2000 bycatch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock	
Qt 1	7.5
Qt 2	5.0
BSAI Yellowfin sole	
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl	
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock	
Qt 1	1.0
Qt 2	1.0
GOA Other trawl	
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl	
Qt 1	2.5
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

The BSAI pollock roe season currently begins January 20 and ends April 15, although pollock seasons in 2000 are expected to change under proposed regulations implementing new Steller sea lion conservation measures. In 1999, the inshore and offshore component fisheries for pollock were closed 6 to 8 weeks prior to April 15, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries did not reopen until August 1, the start of the pollock non-roe season. Directed fishing for pollock by vessels participating in the community development quota program could continue after the end of roe season. However, the community development quota pollock fishery did not resume until just prior to August 1. As in past years, the directed fishing allowances specified for the 2000 pollock roe season likely will be reached before the end of the roe season.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

In 1999, directed fishing for pollock by vessels using nonpelagic trawl gear in the BSAI was prohibited under § 679.20(a)(5)(i)(B). In spite of this prohibition, the catch composition in observed hauls on board some vessels still was attributed to the BSAI botttom pollock fishery with an average halibut bycatch rate in the first calendar quarter fishery equal to 2.49 kg halibut/mt groundfish. The Council has again proposed that the amount of pollock that may be taken in the 2000 directed fishery for pollock using non-pelagic trawl gear be set at zero metric tons under § 679.20(a)(5)(i)(B). Although this prohibition will be effective for 2000, the recommended halibut bycatch rate standard remains at 7.5 kg halibut/mt groundfish and will not likely be a factor in the directed pollock fishery. The bycatch rate standard for the second quarter remains at 5 kg halibut/mt groundfish even though little fishing for pollock is anticipated during this period.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the 2000 allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the yellowfin sole fishery during the first and second quarters of 1999 showed an average bycatch rate of 5.05 and 7.44 kg halibut/mt of groundfish, respectively. These rates are similar to past years, so the Council and NMFS have presumed that a bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue to encourage vessel operators to take action to avoid

excessively high bycatch rates of halibut.

For the ''other trawl'' fisheries, the Council recommended a 30 kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 1999 BSAI ''other trawl'' fishery show first and second quarter halibut bycatch rates of 21.44 and 33.05 kg halibut/mt of groundfish, respectively. Observer data collected from the 1999 GOA ''other trawl'' fishery show first and second quarter halibut bycatch rates of 32.48 and 58.87 kg halibut/mt of groundfish, respectively.

With the exception of the BSAI and GOA second quarter ''other trawl'' fisheries, the average bycatch rates experienced by vessels participating in the GOA and BSAI ''other trawl'' fisheries have been lower than the Council's recommended bycatch rate standards for these fisheries. The Council determined that its recommended halibut bycatch rate standards for the ''other trawl'' fisheries, including the second quarter BSAI and GOA fisheries, would continue to provide an incentive to vessel operators to avoid unusually high halibut bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries.

Furthermore, these standards would provide some leniency to those vessel operators who choose to use large mesh trawl gear or other device as a means to reduce groundfish discard amounts. The bycatch rates of halibut and crab could increase for those vessels using large mesh sizes, but the Council recommended maintaining the current bycatch rate standards for the ''other trawl'' fisheries until data become available that could provide a basis for bycatch rate standards for vessels using large mesh trawl gear.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the yellowfin sole fishery in Zone 1 during the first and second quarters of 1999 averaged 0.04 and 0.03 crab/mt of groundfish, respectively. The average bycatch rates of red king crab experienced in the ''other trawl'' fishery during the first and second quarter of 1999 were 0.13 and 0.05 crab/mt groundfish, respectively. The low 1999 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

For the period January through October 1999, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 98,000 crab, considerably less than the 200,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2000 red king crab bycatch in Zone 1 will be similar to 1999 because the crab bycatch reduction measures and the bycatch limit of 200,000 crab will remain the same.

In spite of anticipated 2000 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at this level to avoid unusually high crab bycatch rates while providing some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 2000 as set forth in Table 1 to this part. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 2000 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through January 29;

Month 2: January 30 through February 26;

Month 3: February 27 through April 1;

Month 4: April 2 through May 6;

Month 5: May 7 through June 3;

Month 6: June 4 through July 1;

Month 7: July 2 through July 29;

Month 8: July 30 through September 2;

Month 9: September 3 through September 30;

Month 10: October 1 through October 28;

Month 11: October 29 through December 2; and

Month 12: December 3 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: December 21, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33633 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 64, No. 248

Tuesday, December 28, 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

Rural Utilities Service

7 CFR Part 1721

Post-Loan Policies and Procedures for Insured Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: As a part of its ongoing program of streamlining regulations, the Rural Utilities Service (RUS) is proposing to amend its regulation on the advance of funds to reflect an increase in the threshold limit from $25,000 to $100,000, for which plant investments may be made in the borrowers' systems and be eligible for insured loan fund financing without being included in an RUS approved construction work plan (CWP). In addition, RUS is proposing to no longer limit borrowers to 130 percent of the project cost estimate for projects in the CWP or amendment and approved loan, as amended, for which prior RUS approval must be obtained. These changes would have the effect of reducing the number of actions by borrowers that would otherwise be required and would reduce administrative costs to borrowers and to the agency.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received on or before January 27, 2000.

ADDRESSES: Written comments should be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHUR INFORMATION CONTACT: Charles M. Philpott, Chief, Engineering Branch, Northern Regional Division, U.S. Department of Agriculture, Rural Utilities Service, Room 4034 South Bldg., 1400 Independence Ave., SW., Washington, DC 20250–1522. Telephone: (202) 720–1432. E-mail: cphilpot@rus.usda.gov.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this section.

Dated: December 21, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–33640 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–79–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200 and –300 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This action would require installation of a terminating modification, and would add repetitive functional tests of that installation, and repair, if necessary. This proposal is prompted by the results of a safety review of the thrust reverser systems on Model 747 series airplanes. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by February 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the

proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–79–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–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 12, 1999, the FAA issued AD 99–15–08, amendment 39–11227 (64 FR 39003, July 21, 1999), applicable to certain Boeing Model 747–200 and –300 series airplanes, to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. That AD superseded, and retained certain requirements of AD 95–06–01, which was prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that could result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–15–08, the FAA specified that the actions required by that AD were considered ''interim action'' and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following a 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–78–2144, Revision 1, dated April 1, 1996, which describes procedures for accomplishment of certain thrust reverser wiring modifications of the wings, strut, and fuselage. Boeing Service Bulletin 747–78–2144 references the following service bulletins:

- Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, and Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998, which describe procedures for adding an actuation system lock bracket and fastening hardware to each thrust reverser; and
- Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, and Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998, which describe procedures for installation of an actuation system lock (also called an electro-mechanical lock or electro-mechanical brake) on each thrust reverser.

Accomplishment of Boeing Service Bulletin 747–78–2144 requires prior or concurrent accomplishment of Lockheed Martin Service Bulletin 78–1007, Revision 1, or Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2; and Lockheed Martin Service Bulletin 78–1020, Revision 2, or Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3.

The modification procedures described by Boeing Service Bulletins 747–78–2144 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletin 747–78–2144, Revision 1, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and therefore proposes that this modification be required. Several airplanes have been successfully modified in accordance with the service bulletins, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–15–08 to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This proposed AD would require installation of a terminating modification, and would add repetitive functional tests of that installation, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Service Bulletins and This Proposed AD

Operators should note that, although the service bulletins described previously recommend no specific compliance time for accomplishment of the actuation system lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition

in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that this AD proposes to mandate, within 36 months, accomplishment of the actions specified for installation of the actuation system lock as described in Lockheed Martin Service Bulletin 78–1007, Revision 1; Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2; Lockheed Martin Service Bulletin 78–1020, Revision 2; Middle River Aircraft Systems Bulletin 78–1020, Revision 3; and Boeing Service Bulletin 747–78–2144, Revision 1; as terminating action for the requirements of AD 99–15–08, and paragraph (b) of AD 95–06–01. Following accomplishment of the installation, the FAA has determined that repetitive functional tests of the CDU cone brake and actuation system lock on each thrust reverser will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The actions originally required by AD 95–06–01, and retained in this proposed AD, take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,960, or $1,980 per airplane, per inspection/test cycle.

The other actions (repeating the functional test of the cone brake required by AD 95–06–01 at reduced intervals) that are currently required by AD 99–15–08, and retained in this proposed AD, would not add any additional economic burden on affected operators.

The bracket installation proposed in this new AD would take approximately 64 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the bracket installation proposed by this AD on U.S. operators is estimated to be $7,680, or $3,840 per airplane.

The actuation system lock installation proposed in this new AD would take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the lock installation proposed by this AD on U.S. operators is estimated to be $1,920, or $960 per airplane.

The functional test proposed in this new AD would take approximately 2 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 functional test proposed by this AD on U.S. operators is estimated to be $240, or $120 per airplane, per test cycle.

The wiring modifications proposed in this new AD would take approximately 833 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modifications proposed by this AD on U.S. operators is estimated to be $99,960, or $49,980 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 39–11227 (64 FR 39003, July 21, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–79–AD. Supersedes AD 99–15–08, amendment 39–11227.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines with Power Management Control engine controls, 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.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of the Original Requirements of AD 95–06–01

Repetitive Tests and Inspections

(a) Within 90 days after April 13, 1995 (the effective date of AD 95–06–01, amendment 39–9171), perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service until the functional test required by paragraph (d) of this AD is accomplished.

(b) Within 9 months after April 13, 1995, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Corrective Action

(c) If any of the inspections and/or functional tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

Restatement of Requirements of AD 99–15–08

Repetitive Tests/Terminating Action

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after August 25, 1999 (the effective date of AD 99–15–08, amendment 39–11227), whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the functional test thereafter at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of such functional test constitutes terminating action for the repetitive test of the CDU cone brake required by paragraph (a) of this AD; the position switch module tests and the bullnose seal inspections continue to be required as specified in paragraph (a) of this AD.

(1) For airplanes equipped with thrust reversers NOT modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 650 hours time-in-service.

(2) For airplanes equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 1,000 hours time-in-service.

Corrective Action

(e) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (e)(1) or (e)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

Terminating Action

(f) Accomplish the requirements of paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs. Accomplishment of the actions required by paragraph (f)(1) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), (d), and (e) of this AD.

(1) Within 36 months after the effective date of this AD, accomplish the requirements of paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Install an actuation system lock bracket and fastening hardware to each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, or Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998.

(ii) Install an actuation system lock (also called an electro-mechanical lock or electro-mechanical brake) on each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, or Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998.

(2) Prior to or concurrent with the accomplishment of the requirements of paragraph (f)(1) of this AD, perform the thrust reverser wiring modifications of the wings, strut, and fuselage, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996.

Repetitive Tests

(g) Within 1,000 hours time-in-service after accomplishment of paragraph (f) of this AD, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the CDU cone brake and actuation system lock on each thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747 Maintenance Manual. Repeat the functional tests thereafter at intervals not to exceed 1,000 hours time-in-service.

Alternative Methods 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–15–08, amendment 39–11227, are approved as alternative methods of compliance with the corresponding requirements specified in this AD.

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

Appendix 1—Thrust Reverser Electro-Mechanical Brake and CDU Cone Brake Test

1. General

A. This procedure contains steps to do two checks:

(1) A check of the holding torque of the electro-mechanical brake.

(2) A check of the holding torque of the CDU cone brake.

2. Electro-Mechanical Brake and CDU Cone Brake Torque Check

A. Prepare to do the checks:

(1) Open the fan cowl panels.

B. Do a check of the torque of the electro-mechanical brake:

(1) Do a check of the running torque of the thrust reverser system:

(a) Manually extend the thrust reverser six inches and measure the running torque.

(1) Make sure the torque is less than 10 pound-inches.

(2) Do a check of the electro-mechanical brake holding torque:

(a) Make sure the thrust reverser translating cowl is extended at least one inch.

(b) Make sure the CDU lock handle is released.

(c) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip.

Note: This will lock the electro-mechanical brake.

(d) With the manual drive lockout cover removed from the CDU, install a ¼-inch extension tool and dial-type torque wrench into the drive pad.

Note: You will need a 24-inch extension to provide adequate clearance for the torque wrench.

(e) Apply 90 pound-inches of torque to the system.

(1) The electro-mechanical brake system is working correctly if the torque is reached before you turn the wrench 450 degrees (1¼ turns).

(2) If the flexshaft turns more than 450 degrees before you reach the specified torque, you must replace the long flexshaft between the CDU and the upper angle gearbox.

(3) If you do not get 90 pound-inches of torque, you must replace the electro-mechanical brake.

(f) Release the torque by turning the wrench in the opposite direction until you read zero pound-inches.

(1) If the wrench does not return to within 30 degrees of initial starting point, you must replace the long flexshaft between the CDU and upper angle gearbox.

(3) Fully retract the thrust reverser.

C. Do a check of the torque of the CDU cone brake:

(1) Pull up on the manual release handle to unlock the electro-mechanical brake.

(2) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(3) Return the manual brake release lever to the locked position to engage the cone brake.

(4) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(5) Install a ¼-inch drive and a dial type torque wrench into the CDU drive pad.

CAUTION: DO NOT USE MORE THAN 100 POUND-INCHES OF TORQUE WHEN YOU DO THIS CHECK. EXCESSIVE TORQUE WILL DAMAGE THE CDU.

(6) Turn the torque wrench to try to manually extend the translating cowl until you get at lease 15-pound inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(a) If the torque is less than 15-pound-inches, you must replace the CDU.

D. Return the airplane to its usual condition:

(1) Re-install the lockout plate.

(2) Fully retract the thrust reverser (unless already accomplished).

(3) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on December 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33568 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This proposal is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions specified by the proposed AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by February 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–66–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–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 26, 1991, a Boeing Model 767–300ER series airplane was involved in an accident as a result of an uncommanded in-flight deployment of a thrust reverser. Following that accident, a study was conducted to evaluate the potential effects of an uncommanded thrust reverser deployment throughout the flight regime of the Boeing Model

747 series airplane. The study included a re-evaluation of the thrust reverser control system fault analysis and airplane controllability. The results of the evaluation indicated that, in the event of thrust reverser deployment during high-speed climb using high engine power, these airplanes also could experience control problems. This condition, if not corrected, could result in possible failure modes in the thrust reverser control system, inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following the 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Other Relevant Rulemaking

This proposed AD is related to AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), which is applicable to all Boeing Model 747–400 series airplanes, and requires various inspections and tests of the thrust reverser control and indication system, and correction of any discrepancy found. Accomplishment of the actions proposed in this AD would terminate certain inspections and tests required by AD 94–15–05.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

- 747–78–2155, Revision 2, dated November 5, 1998, which describes procedures for installation of an additional locking system on the thrust reversers;
- 747–45–2016, Revision 1, dated May 2, 1996, which describes procedures for modifications to the central maintenance computer system hardware and software;
- 747–31–2245, dated June 27, 1996, which describes procedures for modifications of the integrated display system software; and
- 747–78–2154, Revision 3, dated December 11, 1997, which describes procedures for the installation of provisional wiring for an additional thrust reverser locking device. This service bulletin references the Boeing Standard Wiring Practices Manual, which describes wire installation and separation procedures.

Accomplishment of Boeing Service Bulletin 747–78–2155, Revision 2, requires prior or concurrent accomplishment of Boeing Service Bulletins 747–45–2016, Revision 1, 747–31–2245; and 747–78–2154, Revision 3. Accomplishment of these actions would eliminate the need for certain repetitive inspections and tests.

The modification procedures described by Boeing Service Bulletins 747–78–2154 and 747–78–2155 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletins 747–78–2154, Revision 3, and 747–78–2155, Revision 2, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and therefore proposes that this modification be required. Several airplanes have been successfully modified in accordance with the service bulletins, and this past experience should minimize the likelihood for subsequent service bulletin revisions, requests for alternative methods of compliance, and superseding AD's.

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, this proposed AD would require installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Repetitive functional tests to detect discrepancies of the actuation system lock on each thrust reverser would be required to be accomplished in accordance with the procedure included in Appendix 1 of this AD. Correction of any discrepancy detected would be required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual.

Differences Between Service Bulletin and This Proposed AD

Operators should note that, although Boeing Service Bulletin 747–78–2155, Revision 2, does not recommend a specific compliance time for accomplishment of the actuation system lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify functional testing of the actuation system lock installation following accomplishment of that installation, the FAA has determined that repetitive functional tests of the actuation system lock on each thrust reverser will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 177 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2, (45 airplanes) it would take approximately 510 work hours per

airplane, to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $1,377,000, or $30,600 per airplane.

For all airplanes (53 airplanes) it would take approximately 2 work hours per airplane, to accomplish the proposed functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $6,360, or $120 per airplane, per test cycle.

The cost impact figures discussed below refer to actions in other service bulletins for the airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2 (affects 45 U.S.-registered airplanes), that must be accomplished prior to or concurrent with the installation specified in Boeing Service Bulletin 747–78–2155, Revision 2.

It would take approximately 3 work hours per airplane to accomplish the central maintenance computer system modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification is estimated to be $8,100, or $180 per airplane.

It would take approximately 2 work hours per airplane to accomplish the changes to the integrated display system, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification is estimated to be $5,400, or $120 per airplane.

It would take approximately 346 work hours per airplane to accomplish wiring provisions for the thrust reverser sync locks, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification is estimated to be $934,200, or $20,760 per airplane.

The cost impact figures discussed above are 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:

Boeing: Docket 99–NM–66–AD.

Applicability: Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines; 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 inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Modifications

(a) For airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD at the times specified in those paragraphs. Accomplishment of these actions constitutes terminating action for the inspections and tests required by paragraph (a) of AD 94–15–05, amendment 39–8976.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998.

(2) Prior to or concurrent with the installation required by paragraph (a)(1) of this AD, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD:

(i) Modify the central maintenance computer system hardware and software in accordance with Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996.

(ii) Modify the integrated display system software in accordance with Boeing Service Bulletin 747–31–2245, dated June 27, 1996.

(iii) Install the provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletin 747–78–2154, Revision 3, dated December 11, 1997.

Repetitive Functional Tests

(b) Within 4,000 hours time-in-service after accomplishment of paragraph (a) of this AD, or production equivalent; or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the additional locking system on each engine thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual. Repeat the functional test thereafter at intervals not to exceed 4,000 hours time-in-service.

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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permit

(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.

Appendix 1—Thrust Reverse Sync-Lock—Adjustment/Test

1. *General.*

A. There are two sync-locks for each engine thrust reverser. The sync-lock is installed on the lower non-locking hydraulic actuator of each thrust reverser sleeve.

B. The Thrust Reverser Sync-Lock Integrity Test has two tasks:

(1) The first task does a test of the electrical circuit which controls the operation of the sync-lock on each thrust reverser sleeve.

(2) The second task does a test of the mechanical function of the sync-lock on each thrust reverser sleeve.

C. The thrust reverser sync-lock is referred to as ''the sync-lock'' in this procedure.

2. *Thrust Reverser Sync-Lock Integrity Test.*

A. Equipment—Multi-meter, Simpson 260 or equivalent—commercially available

B. Prepare to do the integrity test for the sync-locks

(1) Supply electrical power

(2) For the applicable engine, make sure these circuit breakers on the Main Power Distribution Panel P6, are closed:

6F12 ENG 1 T/R IND
6E12 ENG 2 T/R IND
6D12 ENG 3 T/R IND
6C12 ENG 4 T/R IND
6F13 ENG 1 T/R CONT
6E13 ENG 2 T/R CONT
6D13 ENG 3 T/R CONT
6C13 ENG 4 T/R CONT
6F11 ENG 1 T/R LOCK CONT
6E11 ENG 2 T/R LOCK CONT
6D11 ENG 3 T/R LOCK CONT
6C11 ENG 4 T/R LOCK CONT

(3) Open the fan cowl panels for the applicable engine.

C. Do the electrical integrity test for the sync-locks.

(1) Do these steps, for the applicable engine, to make sure there are no ''hot'' short circuits in the electrical system which can accidentally supply power to the sync-locks:

(a) Remove the electrical connector, D20194, from the sync-lock, V170, on the left sleeve of the thrust reverser.

(b) Remove the electrical connector, D20196, from the sync-lock, V171, on the right sleeve of the thrust reverser.

(c) Use a multi-meter on the plug end of the applicable electrical connector to make sure that these conditions are correct:

D20194 PIN 1 D20194 PIN 2 −3 to +1 VDC and continuity (less than 5 ohms)
D20196 PIN 1 D20196 PIN 2 −3 to +1 VDC and continuity (than 5 ohms)

(d) If you find the correct conditions, do the mechanical integrity test for the sync-locks.

(e) If you did not find these conditions to be correct, you must do these steps:

(1) Make a careful visual inspection of all the electrical wires and connectors between the sync-lock and its power circuit.

(2) Repair all the unserviceable electrical wire and connectors that you find.

(3) Use the multi-meter again to make sure there are no ''hot'' short circuits in the electrical system which can accidentally supply power to the sync-locks.

D. Do the mechanical integrity test for the sync-locks.

(1) Supply hydraulic power.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR IF THE SYNC-LOCKS DO NOT OPERATE CORRECTLY AND THE THRUST REVERSER EXTENDS.

(2) Move the applicable reverser thrust lever aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves do not extend, the sync-locks are serviceable. If the thrust reverser sleeves extend, the applicable sync-lock did not operate correctly.

(3) Replace the sync-lock(s) on the thrust reverser sleeve(s) that did extend when you moved the reverse thrust levers. Repeat steps 2.D.(1) and 2.D.(2) to verify that functional sync-locks are installed.

(4) Move the applicable thrust reverser lever forward to the stow position.

(5) Install the electrical connector, D20194, on the sync-lock, V170 on the left sleeve of the thrust reverser.

(6) Install the electrical connector, D20196, on the sync-lock, V171, on the right sleeve of the thrust reverser.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR WHEN THE THRUST REVERSERS ARE EXTENDED.

(7) Move the applicable thrust reverser aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves extended, the sync-locks are serviceable. If the thrust reverser sleeves did not extend, the applicable sync-lock is not serviceable.

(8) Replace the sync-lock(s) on the thrust reverser sleeve that did not extend when you moved the reverse thrust levers. Repeat steps 2.D.(4) through 2.D.(7) to verify that functional sync-locks are installed.

(9) Repeat steps 2.A. through 2.D. for all other engine positions.

E. Put the airplane back to its usual condition.

(1) Move the reverse thrust levers forward to fully retract the thrust reversers on the applicable engine.

(2) Remove the hydraulic power if it is not necessary.

(3) Remove the electrical power if it is not necessary.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on December 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33569 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require a one-time inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, and replacement of any H–11 steel bolt with an Inconel bolt. This proposal is prompted by reports of fracture or cracking of H–11 steel bolts at the flap transmissions. The actions specified by the proposed AD are intended to prevent loss of a flap transmission, which could reduce lateral controllability of the airplane.

DATES: Comments must be received by February 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport

Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–206–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–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that H–11 steel bolts on trailing edge flap transmissions installed on certain Boeing Model 747 series airplanes have fractured or cracked due to stress corrosion. Bolts made of H–11 steel are known to be susceptible to such stress corrosion cracking. The presence of moisture leads to stress corrosion and, combined with other factors such as preload and shank corrosion, can result in fractured or cracked bolts. Broken bolts could lead to loss of a flap transmission, which could result in flap asymmetry, flap skew, or collateral system damage. This condition, if not corrected, could result in reduced lateral controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2376, dated July 1, 1999, which describes procedures for a one-time general visual inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions. If an H–11 steel bolt is installed, the alert service bulletin describes procedures for replacement with an Inconel bolt. Accomplishment of the replacement specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time general visual inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, and replacement of any H–11 steel bolt with an Inconel bolt. The actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, if any H–11 steel bolt is detected during the inspection specified in this proposed AD, the proposed AD would require replacement of any H–11 steel bolt with an Inconel bolt prior to further flight. The alert service bulletin describes an option to defer replacement of an H–11 steel bolt by performing a torque inspection to determine whether the H–11 steel bolt is broken. If an H–11 steel bolt is not broken, the alert service bulletin allows replacement of the H–11 steel bolt to be deferred for up to 18 months after accomplishment of the inspection. The FAA has determined that such a compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the replacement (approximately four hours per affected flap transmission). In light of these factors, the FAA finds a requirement to replace any H–11 steel bolt with an Inconel bolt prior to further flight to be warranted, in order to ensure the continued safety of the transport airplane fleet.

Cost Impact

There are approximately 775 airplanes of the affected design in the worldwide fleet. The FAA estimates that 226 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 6 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $81,360, or $360 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:

Boeing: Docket 99–NM–206–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, and 747SR series airplanes; line positions 1 through 871 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of a flap transmission, which could reduce lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 1 year after the effective date of this AD, perform a one-time general visual inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, in accordance with Boeing Alert Service Bulletin 747–27A2376, dated July 1, 1999.

(1) If no H–11 steel bolt is found, no further action is required by this AD.

(2) If any H–11 steel bolt is found, prior to further flight, replace with an Inconel bolt, in accordance with the alert 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on December 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33570 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–70–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Model ASW–27 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher GmbH & Co. (Alexander Schleicher) Model ASW–27 sailplanes. The proposed AD would require inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide), and adjusting any clearance that does not meet the criteria. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect interference in the elevator control circuit, which, if not corrected, could result in the elevator control jamming with possible loss of control of the sailplane.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++49 6658 89–0; facsimile: ++49 6658 89–40. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

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 that summarizes 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. 99–CE–70–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, Central Region, Office of the Regional Counsel, Attention: Rules

Docket No. 99–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASW–27 sailplanes. The LBA reports an incident where the elevator controls jammed during takeoff. Investigation of this incident revealed that the 90-degree lever with its attached mass balance lead weight and connecting bolt contacted and rubbed against the cut-out of the lower fin rib.

This condition, if not detected and corrected in a timely manner, could result in the elevator control jamming with possible loss of control of the sailplane.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 5, dated July 16, 1999, which specifies procedures for inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide), and adjusting any clearance that does not meet the criteria.

The LBA classified this service bulletin as mandatory and issued German AD 1999–283, Effective Date: September 9, 1999, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASW–27 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 mm (1/10-inch wide), and adjusting any clearance that does not meet the criteria. Accomplishment of the proposed actions would be required in accordance with Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed inspection, that it would take approximately 1 workhour per sailplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $1,800, or $60 per sailplane.

The FAA estimates that it would take approximately 2 workhours per sailplane to accomplish the proposed adjustment, if necessary, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed adjustment on U.S. operators is estimated to be $3,600, or $120 per sailplane.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS).

When proper clearance is not provided inside the fuselage tail boom to the fin intersection, the 90-degree lever of the elevator controls rubs against the cut-out of the lower fin rib. Although the consequential jamming of the elevator controls is a result of sailplane operation, improper clearance would be prevalent at the time of manufacture. Sailplane operation varies among operators. For example, one operator may utilize the sailplane 50 hours TIS in 3 months while it may take another 12 months or more to accumulate 50 hours TIS. In order to assure that improper clearance is detected and corrected in a timely manner, the compliance time is proposed as ''within the next 90 calendar days after the effective date of this AD.''

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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 a new airworthiness directive (AD) to read as follows:

Alexander Schleicher GmbH & Co. Segelflugzeugbau: Docket No. 99–CE–70–AD.

Applicability: Model ASW–27 sailplanes, serial numbers 27002 through 27104, certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes 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 in the body of this AD, unless already accomplished.

To detect interference in the elevator control circuit, which, if not corrected, could

result in the elevator control jamming with possible loss of control of the sailplane, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, inspect the elevator control circuit clearance inside the fuselage tail boom to the fin intersection to assure a clearance of at least 2.5 millimeters (mm) (1/10-inch wide). Prior to further flight, adjust any clearance that does not meet the criteria. Accomplish these actions in accordance with the Action section of Alexander Schleicher Technical Note No. 5, dated July 16, 1999.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 5, dated July 16, 1999, should be directed to Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: ++49.6658.89–0; facsimile: ++49.6658.89–40. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 1999–283, Effective Date: September 9, 1999.

Issued in Kansas City, Missouri, on December 20, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33571 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers R391–6–132–F/3 Series Propellers

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 Dowty Aerospace Propellers R391–6–132–F/3 series propellers. This proposal would require installation of an improved overspeed governor. This proposal is prompted by reports of overspeed governor failure. The actions specified by the proposed AD are intended to prevent overspeed governor failure, which could result in propeller overspeed, vibration, possible loss of propeller integrity, and loss of control of the airplane.

DATES: Comments must be received by January 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ane-adcomment@faa.gov''. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, United Kingdom; telephone +44 (0) 1452 716000, fax +44 (0) 1452 716001. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, (781) 238–7199.

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 Number 99–NE–38–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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Dowty Aerospace Propellers R391–6–132–F/3 series propellers. The CAA advises that they have received reports of overspeed governor, part numbers (P/N) 697052002 and 697052003, failure. Investigation has revealed premature wear of the overspeed governor weight bushings due to excessively soft material, leading to wear of the bushings and eventual failure of the overspeed governor flyweights. This condition, if not corrected, could result in overspeed governor failure, which could result in propeller overspeed, vibration, possible loss of propeller integrity, and loss of control of the airplane.

Dowty Aerospace Propellers has issued Service Bulletin (SB) No. C130J–61–26, Revision 1, dated April 13, 1999, that specifies procedures for installation of an improved overspeed governor. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 007–09–98 in order to assure the airworthiness of these propellers in the UK.

This propeller model is manufactured in the UK 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.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, the proposed AD would require installation of an improved overspeed governor, P/N 697052004. Overspeed governors, P/N 697052003, must be replaced within 480 hours time-in-service (TIS), or 3 months after the effective date of this AD, whichever occurs first, due to their higher wear rate. Overspeed governors, P/N 697052002, must be replaced within 2,000 hours TIS after the effective date of this AD. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 163 propellers of the affected design in the worldwide fleet. There are currently no domestic propellers of the affected design that would be affected by this proposed AD, but if one were imported, it would take approximately 4 work hours per propeller to accomplish the proposed actions. The average labor rate is $60 per work hour. Required parts would cost approximately $2,500 per propeller. Based on these figures, the total cost impact of the proposed AD on a U.S. operator, if a propeller were imported, is estimated to be $2,740 per propeller.

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:

Dowty Aerospace Propellers: Docket No. 99–NE–38–AD.

Applicability: Dowty Aerospace Propellers R391–6–132–F/3 series propellers s, installed on but not limited to Lockheed Martin 382J (C130J military) airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller 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 propellers 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 overspeed governor failure, which could result in propeller overspeed, vibration, possible loss of propeller integrity, and loss of control of the airplane, accomplish the following:

(a) For propellers with overspeed governors, part number (P/N) 697052003, install an improved overspeed governor, P/N 697052004, within 480 hours time-in-service (TIS), or 3 months after the effective date of this AD, whichever occurs first, in accordance with Dowty Aerospace Propellers Service Bulletin (SB) No. C130J–61–26, Revision 1, dated April 13, 1999.

(b) For propellers with overspeed governors, P/N 697052002, install an improved overspeed governor, P/N 697052004, within 2,000 hours TIS after the effective date of this AD in accordance with Dowty Aerospace Propellers SB No. C130J–61–26, Revision 1, dated April 13, 1999.

(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, Boston Aircraft Certification Office (ACO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

(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 Burlington, Massachusetts, on December 21, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–33572 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB35

Proposed Rulemaking Concerning Amendments to Insider Trading Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') proposes to amend Commission Regulation 1.59 which addresses various trading prohibitions imposed on persons associated with self-regulatory organizations (''SROs''). Regulation 1.59 presently requires SROs to adopt rules prohibiting employees, governing board members, and members of committees from certain trading activities and from disclosing material, non-public information. The Commission proposes to amend Regulation 1.59 so that governing board members, and individuals serving as the ''functional equivalent'' of governing board members, would be clearly excluded from the definition of ''employee'' for Regulation 1.59 purposes. The Commission also seeks to clarify the

meaning of Regulation 1.59(b)(1)(i) regarding the scope of the SRO employee trading prohibition, as its current punctuation may create some confusion. Finally, the Commission is requesting public comment regarding the application of Regulation 1.59 to non-paid advisors and paid consultants.

DATES: Comments must be submitted by January 27, 2000.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Associate Director, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission Regulation 1.59 generally requires SROs to adopt rules prohibiting employees, governing board members, and committee members from trading commodity interests on the basis of material, non-public information obtained in the course of their official duties (hereinafter referred to as ''material, non-public information''). The Commission is proposing to amend Regulation 1.59 to provide greater clarity by resolving certain ambiguities in the current provision. The following sections of this release analyze the Commission's proposed rulemaking. Each section describes a provision of the Commission's proposed rulemaking and the Commission's rationale for proposing the amendment. The release also poses certain questions as to other aspects of the regulation in order to encourage comment from industry participants.

II. Proposed Rulemaking

A. Background

Currently, there are two categories of individuals subject to Regulation 1.59:

(1) SRO employees, including those employed by the SRO on a salaried or contract basis; and (2) SRO governing board and/or committee members. Under Regulation 1.59, SRO employees are subject to stricter prohibitions against trading than SRO governing board or committee members.

Specifically, employees are absolutely prohibited from trading any commodity interest traded on or cleared by the employing contract market or clearing organization, or any related commodity interest. Additionally, employees having access to material, non-public information concerning a commodity interest are prohibited from trading in any such commodity interest that is traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization, or traded on or cleared by a linked exchange.

Governing board and committee members, on the other hand, are prohibited from using material, non-public information for any purpose other than the performance of their official duties. The possession of material, non-public information, therefore, does not bar these individuals from trading commodity interests. Rather, under Regulation 1.59(c), governing board and committee members are prohibited from trading for their own account, or for or on behalf of any other account, based on this material, non-public information.

B. Technical Amendments

1. Definition of ''Employee''

a. *Governing Board Members.* Current Regulation 1.59(a)(2) defines ''employee'' as ''any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization.'' In 1986, when this definition was originally adopted, members of governing boards generally were not salaried. Since that time, the industry trend has been to give stipends or payments to governing board members for their service. As such, the Commission believes there may be a need to clarify the ''employee'' definition since salaried governing board members are potentially subject to two inconsistent insider trading restrictions: one for governing board members and another for employees.

The Commission believes that including salaried governing board members in the definition of ''employee'' might create disincentives for those individuals to serve in this capacity, thus preventing SROs from taking advantage of their expertise. The Commission therefore proposes to amend the definition of ''employee'' to exclude explicitly governing board members. This would make clear that persons who receive a salary from the SRO solely for their governing board activities would be excluded from the ''employee'' restrictions against trading. Accordingly, under Regulation 1.59(c), all governing board members, regardless of a salary received solely for their governing board activities, would be prohibited only from using material, non-public information for any purpose other than the performance of their official duties.

b. *Individuals Serving as the Functional Equivalent of Governing Board Members.* There are certain types of individuals salaried by SROs that work closely with governing boards but are not technically governing board members. Specifically, some exchange governing boards permit *ex officio* or *emeritus* members to participate in board deliberations. The Commission understands that such individuals can provide valuable assistance and counsel. Under current Regulation 1.59, such individuals are technically ''employees'' since they are compensated by the exchange and are not bona fide governing board members. However, because *ex officio* and *emeritus* members are paid solely for their governing board activities, the Commission believes they are more analogous to governing board members than to SRO employees and should be treated as such for purposes of Regulation 1.59. As current Regulation 1.59 does not define ''governing board member,'' the Commission proposes to amend it by defining the term specifically to include individuals who solely perform the functions of governing board members, even if they are not technically members of the exchange's governing board. The definition would therefore include those individuals serving the ''functional equivalent'' of governing board members.

2. Clarification That SRO Employees With Access to Material, Non-Public Information are Prohibited From Trading in any Commodity Interest Traded on or Cleared by: (1) Contract Markets or Clearing Organizations Other Than the Employing SRO; or (2) Linked Exchanges

Regulation 1.59(b) establishes four types of trading prohibitions for SRO employees. This paragraph, however, does not distinctly enumerate each trading prohibition. It merely provides a list, separating each prohibition with a comma. Specifically, the paragraph requires SROs to maintain in effect rules which, at a minimum, prohibit employees from trading in the following four scenarios:

> In any commodity interest traded on or cleared by the employing contract market or clearing organization, in any related commodity interest, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization, and in any commodity interest traded on or cleared by a linked exchange *where the employee has access to material nonpublic information concerning such commodity interest*;

Regulation 1.59(b)(1)(i) (emphasis added).

The Commission believes that the present structure of this paragraph may

create confusion as to which trading prohibitions the underlined clause modifies. In particular, because no punctuation precedes the clause ''where the employee has access to material nonpublic information concerning such commodity interest'' (hereinafter referred to as the ''access clause''), this precondition for the application of the trading restriction would appear to apply to only one trading scenario—the trading scenario that immediately precedes it. However, an examination of this provision as it existed prior to the 1993 amendments to Regulation 1.59 (''1993 Amendments'') and of the **Federal Register** releases promulgating those amendments confirms that the ''access clause'' should also apply to the prohibition on trading ''in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization.''[1]

Prior to the 1993 Amendments, the insider trading regulation for employees required SROs to adopt rules which, at a minimum, prohibited employees from trading in the following three scenarios:

> In any commodity interest traded on or cleared by the employing contract market or clearing organization, in any related commodity interest, and in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization *where the employee has access to material nonpublic information concerning such commodity interest.*

51 FR 44866, 44869 (Dec. 12, 1986) (emphasis added).

In that release, the three scenarios were individually numbered at one point in the narrative,[2] rather than merely separated by commas as done in the text of the regulation, and thus made clear that the ''access clause'' applied only to the last trading scenario.

In 1993, the fourth prohibited trading scenario relating to ''any commodity interest traded on or cleared by a linked exchange'' (hereinafter referred to as the ''linked exchange prohibition'') was added immediately before the ''access clause.'' [3] The **Federal Register** release proposing the addition stated it ''would make clear that SRO rules must prohibit SRO employees from trading in commodity interests traded on or cleared by linked exchanges where the employee has access to material, non-public information.''[4] As a result of inserting this fourth trading scenario, without further altering the paragraph in any other way, the ''access clause'' reads as applying only to the ''linked exchange prohibition.'' Notably, neither the proposing release nor the adopting release of the 1993 Amendments indicated that a change of policy was intended with respect to the treatment of trading a commodity interest ''traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization.''

In order to correct this, the Commission proposes to amend Regulation 1.59(b)(1)(i) by subdividing each prohibition into a separate subparagraph.[5] The Commission believes that these proposed amendments to paragraph (b)(1)(i) would clearly distinguish the situations in which employees of SROs are absolutely prohibited from trading commodity interests from the situations in which they are prohibited from trading only if they have access to material, non-public information.

C. Clarification of the Treatment of ''Consultants''

The Commission is aware that SROs employ consultants in a variety of capacities. Furthermore, Commission staff understands that, in general, consultants are mostly used in the field of information technology. Depending on the nature of work being done, a consultant may or may not have access to material, non-public information.

Regulation 1.59 provides that consultants are SRO ''employees'' since Regulation 1.59(a)(2) defines an employee as ''any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization.'' Indeed, the Commission specifically indicated its intention that such consultants be considered ''employees'' for Regulation 1.59 purposes when it originally promulgated the regulation in 1986.[6] Nonetheless, Commission staff has learned that some exchanges may retain consultants that they do not consider ''employees.'' The Commission requests comment on whether Regulation 1.59 should be amended in any way in order to clarify the treatment of these consultants.

D. Request for Comments on Use of Non-Paid Advisors by Governing Boards and Committees

The Commission also seeks comment concerning the application of Regulation 1.59 to non-paid advisors of SRO governing boards and committees. Presently, these individuals are not subject to Regulation 1.59 requirements as they are neither ''employees''—since they are not compensated—nor actual members of an SRO governing board or committee. The Commission believes that such advisors may merit special treatment under Regulation 1.59. Towards that end, the Commission requests comment on the extent to which such individuals are utilized by SRO governing boards and committees and their level of participation in these bodies' deliberations. In particular, the Commission seeks comment on whether these individuals are merely solicited for their opinions or integrally involved in various matters being addressed by the SRO governing board or committees.

E. Conclusion

The Commission believes that the proposed amendments to Regulation 1.59 would clarify existing ambiguities as well as adapt, as appropriate, to changes in the industry since the regulation was last amended.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [7] requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission previously has determined that contract markets are not ''small entities'' for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets.[8] Furthermore, the Acting Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals affecting registered futures associations, if adopted, would not have a significant economic impact on a substantial number of small entities.[9]

This proposed rulemaking would impact SROs, both contract markets and registered futures associations, and their employees, governing board members and committee members. The

[1] *See* 58 FR 44470 (Aug. 23, 1993); 58 FR 54966 (Oct. 25, 1993). The 1993 Amendments were made in order to, among other things, implement the felony standard of Section 214 of the Futures Trading Practices Act of 1992 and to update the definitions of ''linked exchange'' and ''material information'' due to certain industry developments since Regulation 1.59 was revised last.

[2] 51 FR 44866, 44867 (Dec. 12, 1986).

[3] 58 FR 54966, 54971, 54974 (Oct. 25, 1993).

[4] 58 FR 44470, 44472 (Aug. 23, 1993).

[5] As proposed, Regulations 1.59(b)(1)(i)(A), (B), (C) and (D) would each be styled to prohibit an employee ''from trading, directly or indirectly,'' certain commodity contracts in various circumstances.

[6] 51 FR 44866, 44867 at note 6 (Dec. 12, 1986). ''It should be noted that consultants and independent contractors employed by the self-regulatory organization would be included within the definition of 'employee' under [R]egulation 1.59 and, therefore, would be subject to the same restrictions applicable to all other exchange employees.''

[7] 5 U.S.C. 601 *et seq.* (1994).

[8] 47 FR 18618, 18619 (Apr. 30, 1982).

[9] *See* 58 FR 13565, 13569 (Mar. 12, 1993).

Commission has previously determined that the establishment of Regulation 1.59, as well as subsequent amendments to the regulation, have not created significant economic impact for affected entities or persons.[10]

The Commission does not believe that the proposed amendments would have a significant economic impact on SROs or employees, governing board members and committee members. The proposed amendments merely clarify the existing rule. The obligations and prohibitions which would be established by the proposed amendments are essentially the same obligations and prohibitions that are created by SRO rules promulgated pursuant to existing Regulation 1.59.

Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA,[11] that the proposed rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Agency Information Activities: Proposed Collection; Comment Request

The Paperwork Reduction Act of 1980 (''PRA'')[12] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission believes the proposed amendments to Regulation 1.59 would not impose a paperwork burden on self-regulatory organizations.

Copies of the information collection submission to the Office of Management and Budget are available from Stacy Dean Yochum, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5157.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Members of contract markets.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission hereby proposes to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.59 would be amended as follows:

A. Paragraphs (a)(3) through (a)(8) are redesignated as paragraphs (a)(4) through (a)(9).

B. Paragraph (a)(2)is redesignated as paragraph (a)(3) and revised and new paragraph (a)(2) is added;

C. Paragraph (b)(1) introductory text and paragraph (b(1)(i) are revised to read as follows:

§ 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.

(a) *Definitions.* For purposes of this section:

* * * * *

(2) *Governing board member* means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(3) *Employee* means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization, but does not include any governing board member compensated by the exchange solely for governing board activities.

* * * * *

(b) Employees of self-regulatory organizations: Self-regulatory organization rules.

(1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission regulation 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) Employees of the self-regulatory organization:

(A) From trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market or clearing organization;

(B) From trading, directly or indirectly, in any related commodity interest;

(C) From trading, directly or indirectly, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization where the employee has access to material, nonpublic information concerning such commodity interest; and

(D) From trading, directly or indirectly, in any commodity interest traded on or cleared by a linked exchange where the employee has access to material, nonpublic information concerning such commodity interest; and

* * * * *

Issued in Washington, DC on December 15, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33305 Filed 12–27–99; 8:45 am]

BILLING CODE 6351–01–P

[10] *See* 47 FR 18618 (Apr. 30, 1982); 50 FR 24533 (June 11, 1985); 51 FR 44866 (Dec. 12, 1986); 52 FR 32568 (Aug. 28, 1987); 52 FR 48974 (Dec. 29, 1987); 58 FR 44470 (Aug. 23, 1993); 58 FR 54966 (Oct. 25, 1993).

[11] 5 U.S.C. 605(b) (1994).

[12] 44 U.S.C. 3501 *et seq.* (1988).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 243, and 249

[Release Nos. 33–7787, 34–42259, IC–24209, File No. S7–31–99]

RIN 3235–AH82

Selective Disclosure and Insider Trading

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing new rules to address three issues: the selective disclosure by issuers of material nonpublic information; whether insider trading liability depends on a trader's ''use'' or ''knowing possession'' of material nonpublic information; and when the breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The proposals are designed to promote the full and fair disclosure of information by issuers, and to clarify and enhance existing prohibitions against insider trading.

DATES: Public comments are due on or before March 29, 2000.

ADDRESSES: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments can also be sent electronically to the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–31–99. If e-mail is used, include this file number on the subject line. Anyone can inspect and copy the comment letters in the Commission's Public Reference Room at 450 5th St., NW,

Washington, DC 20549. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Assistant General Counsel, Sharon Zamore, Senior Counsel, or Elizabeth Nowicki, Attorney, Office of the General Counsel, at (202) 942–0890.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (Commission) today is proposing for comment new rules: Regulation FD,[1] Rule 181 under the Securities Act,[2] Rule 10b5–1,[3] Rule 10b5–2,[4] and amendments to Forms 8–K[5] and 6–K.[6]

I. Executive Summary

Information is the lifeblood of our securities markets. Congress enacted the federal securities laws to promote fair and honest securities markets, and a critical purpose of these laws is to promote full and fair disclosure of important information by issuers of securities to the investing public. The Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), as implemented by Commission rules and regulations, provide for systems of mandatory disclosure of certain material information in securities offerings and in periodic reports.

The antifraud provisions of the federal securities laws also play a very important role in furthering full and fair disclosure. Among other things, the antifraud provisions prohibit insider trading, or the fraudulent misuse of material nonpublic information. Unlike the law underlying the issuer disclosure requirements, which generally has been developed through statutes and rules, the law of insider trading has largely been developed through a series of Commission and judicial decisions in civil and criminal enforcement cases involving fraud charges. As a result, a few areas of insider trading law have been marked by disagreement among the courts.

Today's proposals address several issues related to full and fair disclosure of information, and insider trading law. The proposed rules are the following:

- **Regulation FD** (Fair Disclosure), a new issuer disclosure rule, deals with the problem of issuers making selective disclosure of material nonpublic information to analysts, institutional investors, or others, but not to the public at large. Although analysts play an important role in gathering and analyzing information, and disseminating their analysis to investors, we do not believe that allowing issuers to disclose material information selectively to analysts is in the best interests of investors or the securities markets generally. Instead, to the maximum extent practicable, we believe that all investors should have access to an issuer's material disclosures at the same time. Regulation FD, therefore, would require that: (1) When an issuer intentionally discloses material information, it do so through public disclosure, not through selective disclosure; and (2) whenever an issuer learns that it has made a non-intentional material selective disclosure, the issuer make prompt public disclosure of that information.
- **Rule 10b5–1** addresses an important unsettled issue in insider trading law: whether the Commission must show in its insider trading cases that the defendant ''used'' the inside information in trading, or merely that the defendant traded while in ''knowing possession'' of the information. The Rule would state the general principle that insider trading liability arises when a person trades while ''aware'' of material nonpublic information, but also provides four exceptions to liability. In these four situations, where a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith, it will be clear that the trader did not use the information he or she was aware of.
- **Rule 10b5–2** addresses another unsettled issue in current insider trading law: what types of family or other non-business relationships can give rise to liability under the misappropriation theory of insider trading. The Rule would set forth three non-exclusive bases for determining that a duty of trust or confidence was owed by a person receiving information: (1) When the person agreed to keep information confidential; (2) when the persons involved in the communication had a history, pattern, or practice of sharing confidences that resulted in a reasonable expectation of confidentiality; and (3) when the person who provided the information was a spouse, parent, child, or sibling of the person who received the information, unless it were shown affirmatively, based on the facts and circumstances of that family relationship, that there was no reasonable expectation of confidentiality.

II. Selective Disclosure: Regulation FD

A. Background

Full and fair disclosure of information by issuers of securities to the investing public is a cornerstone of the federal securities laws. In enacting the mandatory disclosure system of the Exchange Act, Congress sought to promote disclosure of ''honest, complete, and correct information''[7] to facilitate the operation of fair and efficient markets.[8]

Despite this well-recognized principle, the federal securities laws do not generally require an issuer to make public disclosure of all important corporate developments when they occur. Periodic reports (*e.g.,* Forms 10–K and 10–Q) call for disclosure of specified information on a regular basis, and domestic issuers are additionally required to report some types of events on a Form 8–K soon after they occur. However, in the absence of a specific duty to disclose, the federal securities laws do not require an issuer to publicly disclose all material events as soon as they occur. While we encourage prompt disclosure of material information as the best disclosure practice,[9] and self-regulatory organization (SRO) rules often require this,[10] issuers retain some control over the precise timing of many important corporate disclosures.

In practice, issuers also retain control over the audience and forum for some important disclosures. If a disclosure is made at a time when no Commission filing is immediately required, the issuer determines how and to whom to make its initial disclosure. As a result, issuers sometimes choose to disclose information selectively—*i.e.,* to a small group of analysts or institutional investors—before making broad public disclosure by a press release or Commission filing.

Many recent cases of selective disclosure have been reported in the media.[11] In some cases, selective

[1] 17 CFR 243.100 and 243.101.

[2] 17 CFR 230.181.

[3] 17 CFR 240.10b5–1.

[4] 17 CFR 240.10b5–2.

[5] 17 CFR 249.308.

[6] 17 CFR 249.306.

[7] S. Rep. No. 73–1455, at 68 (1934).

[8] ''The idea of a free and open public market is built upon the theory that competing judgments of buyers and sellers as to the fair price of a security brings about aq situation where the market price reflects as nearly as possible a just price. . . . [T]he hiding and secreting of important imformation obstructs the operation of the markets as indices of real value,'' H.R. Rep. No. 73–1383, at 11 (1934). *See also* S. Rep. No. 73–792, at 10–11, 19–20 (1934).

[9] *See* Timely Disclosure of Material Corporate Developments, Securities Act Release No. 5092 (Oct. 15, 1970) (35 FR 16733).

[10] *See, e.g.,* NYSE Listed Company Manual, para. 202.05 (Timely Disclosure of Material News Developments); NASD Rules 4310(c)(16), 4320(e)(14), and IM–4120–1 (Disclosure of Material Information).

[11] *See, e.g.,* Susan Pulliam and Gary McWilliams, *Compaq Is Criticized for How It Disclosed PC*

Continued

disclosures have been made in conference calls or meetings that are open only to analysts and/or institutional investors, and exclude other investors, members of the public, and the media. In other cases, company officials have made selective disclosures directly to individual analysts. Commonly, these situations involve advance notice of the issuer's upcoming quarterly earnings or sales figures—figures which, when announced, have a predictable and significant impact on the market price of the issuer's securities.

We are troubled by the many recent reports of selective disclosure and the potential impact of this practice on market integrity. As the Supreme Court has recently emphasized, promoting investor confidence in the fairness of our securities markets is an ''animating purpose'' of the Exchange Act.[12] Clearly, one critical component of that mission is protecting investors from the prospect that others in the market possess ''unerodable informational advantages'' [13] obtained through superior access to corporate insiders.

In our view, the current practice of selective disclosure poses a serious threat to investor confidence in the fairness and integrity of the securities markets. We have recognized that benefits may flow to the markets from the legitimate efforts of securities analysts to ''ferret out and analyze information'' [14] based on their superior diligence and acumen. But we do not believe that selective disclosure of material nonpublic information to analysts—or to others, such as selected investors—is beneficial to the securities markets. As a recent academic study indicated, selective disclosure has the immediate effect of enabling those privy to the information to make a quick profit (or quickly minimize losses) by trading before the information is disseminated to the public.[15] Indeed, while issuer selective disclosure is not a new practice,[16] the impact of such selective disclosure appears to be much greater in today's more volatile, earnings-sensitive markets. Accordingly, we think that a continued practice of selective disclosure by issuers inevitably will lead to a loss of public confidence in the fairness of the markets.

Even apart from the issue of fundamental fairness to all investors, selective disclosure poses other real threats to the health and integrity of our securities markets. Corporate managers should be encouraged to make broad public disclosure of important information promptly. If, however, they are permitted to treat material information as a commodity that can be parceled out selectively, they may delay general public disclosure so that they can selectively disclose the information to curry favor or bolster credibility with particular analysts or institutional investors.[17]

Moreover, if selective disclosure were to go unchecked, opportunities for analyst conflicts of interests would flourish. We are greatly concerned by reports indicating a trend toward less independent research and analysis as a basis for analysts' advice, and a correspondingly greater dependence by analysts on access to corporate insiders to provide guidance and ''comfort'' for their earnings forecasts.[18] In this environment, analysts are likely to feel pressured to report favorably about particular issuers to avoid being ''cut * * * off from access to the flow of non-public information through future analyst conference phone calls'' or other means of selective disclosure.[19] This raises troubling questions about the degree to which analysts may be pressured to shade their analysis in

Troubles, Wall St. J., Mar. 2, 1999, at C1; Susan Pulliam, *Abercrombie & Fitch Ignites Controversy Over Possible Leak of Sluggish Sales Data,* Wall St. J., Oct. 14, 1999, at C1; Randall Smith, *Conference Calls to Big Investors Often Leave Little Guys Hung Up,* Wall St. J., June 21, 1995, at C1; George Anders and Robert Berner, *Webvan to Delay IPO in Response to SEC Concerns,* Wall St. J., Oct. 7, 1999, at C16 (disclosure to institutional investors in road-show presentations). In addition, a recent study of corporate disclosure practices by the National Investor Relations Institute reported that 26% of responding companies stated that they engaged in some types of selective disclosure practices. National Investor Relations Institute, *A Study of Corporate Disclosure Practices, Second measurement,* 18 (May 1998) (NIRI Corporate Disclosure Study).

[12] *United States* v. *O'Hagan,* 521 U.S. 642, 658 (1997).

[13] *Id.* (citing Brudney, *Insiders, Outsiders, and Informational Advantages Under the Federal Securities Laws,* 93 Harv. L. Rev. 322, 356 (1979)).

[14] *Raymond L. Dirks,* 47 S.E.C. 434, 441(1981). This concern about protecting the legitimate functions of securities analysts was a basis for the Supreme Court's decision in *Dirks* v. *SEC,* 463 U.S. 646 (1983), which addressed an analyst's liability under Rule 10b-5 insider trading law. *See also* Daniel R. Fischel, *Insider Trading and Investment Analysts: An Economic Analysis of Dirks* v. *Securities and Exchange Commission,* 13 Hofstra L. Rev. 127, 142 (1984). *But see* Donald C. Langevoort, *Investment Analysts and The Law of Insider Trading,* 76 Va. L. Rev. 1023, 1044 (1990) (stating that the argument favoring special treatment for analyst disclosures is ''substantially overstated''). We discuss the *Dirks* case in greater detail at *infra* pp. 12–13.

[15] *See* Richard Frankel, Marilyn Johnson, and Douglas J. Skinner, *An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium,* 37 J. Acct. Res. 133 (Spring 1999). This study revealed that, during and immediately following teleconference calls between analysts and issuers, trading volume in the issuers' stock increased, average trade size increased, and stock price volatility increased. This led the researchers to conclude that material information is released during these selective disclosure periods, which is immediately filtered to a subset of large investors who are able to trade on the information before it is fully disseminated to the market.

[16] The NIRI Corporate Disclosure Study indicates that a higher percentage of issuers engaged in possible selective disclosure practices in 1995 than in 1998. *See* NIRI Corporate Disclosure Study, *supra* note 11 at 18.

[17] *See SEC* v. *Phillip J. Stevens,* Litigation Release No. 12813 (Mar. 19, 1991).

[18] Fred Barbash, *Companies, Analysts A Little Too Cozy,* Wash. Post, Oct. 31, 1999, at H1 (''Companies coddle analysts to obtain the most favorable coverage, which is critical to their stock price. Analysts covet their access to companies, because special knowledge is the only thing they have to offer clients.''); Andrew Hill, *Let the buyer beware,* Fin. Times, Oct. 27, 1999, at 14 (''The death of the 'sell' note is perhaps the clearest signal that big securities houses are suppressing or toning down negative analysis of companies that are clients or potential clients. In a snapshot of 27,700 individual analyst reports, taken at the beginning of this month, First Call/Thomson Financial, the research company, found nearly 70 per cent recommended that investors buy the stock, and just under 1 per cent advised they should sell.''); Gretchen Morgenson, *The Earnings Waltz: Is the Music Stopping?,* N.Y. Times, Oct. 24, 1999, at 3 (''As quarterly earnings numbers became paramount, analysts grew more dependent upon company management for 'guidance' to the correct earnings forecast. The more help they received, the less work they did.''); Robert McGough, *One Analyst Anticipated IBM News,* Wall St. J., Oct. 22, 1999, at C1 (''Too often analysts rely on executives at the companies they cover to let them know what's going on in the business.''); Jonathan Weil, *In Stock Ratings, Many Analysts Say 'Sell' Is a Four-Letter Word,* Wall St. J., May 6, 1998, at T2 (attributing analysts' ''speak no evil'' motto to fact that ''most analysts don't want to risk offending corporate executives, who have been known to retaliate by restricting access to information or selecting competitors' corporate-finance departments to do lucrative investment-banking deals. So analysts issue watered-down critiques, and shareholders have to read between the lines for suggestions on when to get out of a stock.''); Jeffrey M. Landerman, *Who Can You Trust? Wall Street's Spin Game, Stock Analysts Often Have a Hidden Agenda,* Bus. Wk., Oct. 5, 1998, at 148 (referencing a recent survey of Wall Street research, sales, and trading practices in which nearly one-third of the 272 responding large U.S. companies said that in response to an analyst's sell recommendation they would '' 'reduce communications and reduce access' . . . . The great fear of the analyst when he or she goes calling on a company is to find the door shut.'').

[19] John C. Coffee, Jr., *Is Selective Disclosure Now Lawful?,* N.Y.L.J., July 31, 1997, at 5. Professor Coffee also argues that selective disclosure may impair market efficiency in one other respect. If market efficiency is measured by the width of bid/asked spreads, market makers will widen spreads to protect themselves if they fear that others possess and will exploit asymmetric informational advantages. *See also* Amitabh Dugar, Siva Nathan, *Analysts' Research Reports: Caveat Emptor,* 5 J. Investing 13 (1996) (''Analysts depend on corporate management for accurate and timely information about the companies they follow. It is no secret that companies wield restriction of access as a weapon against analysts who issue a negative research report on their stock. Retribution ranges from refusing the analyst's calls for information, to barring the analysts from mailings, conference calls, and meetings, and even threats of legal action and physical harm.'' (citations and footnote omitted)).

order to maintain their access to corporate management. We believe that these pressures would be reduced if issuers were clearly prohibited from selectively disclosing material information to favored analysts.

These concerns about selective disclosure are widely shared, as reflected both in stock exchange listing standards and in ''best practices'' guidelines of investor relations and analyst groups. The New York Stock Exchange Listed Company Manual and the NASD Rules both require listed issuers to disclose promptly ''to the public'' information about material developments.[20] The National Investor Relations Institute (NIRI) guidance in this area also states that an issuer ''should not disclose in selective situations—such as conference calls and analyst meetings—information that it is unwilling to make available for general public use.'' [21] Similarly, the Association of Investment Management and Research Standards of Practice Handbook states that if an analyst selectively receives disclosure of information that he deems material, ''the member must encourage the public dissemination of that information and abstain from making investment decisions on the basis of that information unless and until it is broadly disseminated to the marketplace.'' [22]

Finally, revolutions in communications and information technologies have made it much easier for issuers today to disseminate important information broadly and swiftly. A generation ago, issuers may have relied on conferences attended by a handful of interested parties, or news releases that led to delayed, indirect retransmission of information to the public. Lacking effective means to communicate directly to large numbers of investors, issuers may have relied on analysts to serve as information intermediaries. In the last few years, however, new, effective methods for mass communications have become widely available. Today, issuers can—and many do—use a variety of these new methods to communicate with the market, including: live transmissions of annual meetings and news conferences on the Internet or closed circuit television; listen-only telephone transmission of meetings and analyst conferences; and company websites.[23] With the availability of these new technologies, issuers can much more easily reach a wide investor audience with their disclosures, and do not need to rely on analysts as heavily as in the past to serve as information intermediaries.[24]

Nevertheless, issuers are continuing to engage in selective disclosures of material nonpublic information, perhaps due in part to the uncertainty in current law about when selective disclosures are prohibited. For at least the past 30 years, the issue of potential liability for selective disclosure has been addressed under the principles of fraud law, particularly the law of insider trading. Under early insider trading case law, which appeared to require that traders have equal access to corporate information,[25] selective disclosure of material information to securities analysts could lead to liability.[26]

This changed with the Supreme Court's decisions in *Chiarella* v. *United States* [27] *and Dirks* v. *SEC.*[28] *In Chiarella,* the Court rejected the ''parity of information'' approach, which considered trading to be fraudulent whenever the trader possessed material information not generally available. The Court instead held that there must be a breach of a fiduciary or other relationship of trust and confidence before the law imposes a duty to disclose information or refrain from trading.

In *Dirks,* the Supreme Court addressed the disclosure, or ''tipping,'' of material nonpublic information by an insider to an analyst.[29] The Court rejected the idea that a person is prohibited from trading whenever he knowingly receives material nonpublic information from an insider. Instead, it stated that a recipient of inside information is prohibited from trading only when the information has been made available to him ''*improperly*''—that is, in breach of the insider's fiduciary duty to shareholders. To determine whether a breach of duty occurred, ''courts [must] focus on objective criteria, *i.e.*, whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings.'' [30]

After *Dirks,* there have been very few insider trading cases based on disclosure to, or trading by, securities analysts. In some situations, an insider's selective disclosure can be viewed as improper, because the disclosure was motivated by a desire for some type of personal benefit.[31] In other cases, however, the evidence to support the ''personal benefit'' argument under *Dirks* is less clear. As a result, many have viewed *Dirks* as affording considerable protection to insiders who make selective disclosures to analysts, and to the analysts (and their clients) who receive selectively disclosed information.[32]

Although the antifraud provisions of the securities laws do not require that all traders possess equal information when they trade, we believe that our disclosure rules should promote fair

[20] *See supra* note 10.

[21] National Investor Relations Institute, *Standards of Practice for Investor Relations,* 30 (Apr. 1998).

[22] Association for Investment Management and Research, *Standards of Practice Handbook, 232 (8th ed. 1999).*

[23] *See, e.g.,* National Investor Relations Institute, Executive Alert, *Investor Relations Officers Report Dramatic Change in Ways Companies Communicate With Key Audiences* (June 18, 1999); Lynn Cowan, *Internet Broadcast of Conference Calls Creates Buzz and Niche for Businesses,* Wall St. J., May, 24, 1999, at B9D.

[24] We also have greater flexibility and improved technology for widespread dissemination of information. The Commission's EDGAR system permits investors to access issuer information almost as soon as it is filed with us.

[25] *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833, 849 (2d Cir. 1968) (en banc), *cert. denied,* 394 U.S. 976 (1969.

[26] *See SEC* v. *Bausch & Lomb, Inc.,* 565 F.2d 8 (2d Cir. 1977). At the same time, however, issuers were encouraged to divulge tidbits of non-material information to analysts to help them piece together more informed opinions. *Id.* The courts reasoned that although giving analysts direct, nonpublic, material information was prohibited, the law should permit ''[a] skilled analyst with knowledge of [a] company and the industry [to] piece seemingly inconsequential data together with public information into a mosaic which reveals material non-public information.'' *Elkind* v. *Liggett & Myers, Inc.,* 635 F.2d 156, 165 (2d Cir. 1980). This theory is known as the ''mosaic theory.'' The resulting tension between prohibited material disclosures and acceptable non-material disclosures led one judge to compare the corporate official's encounter with an analyst to a ''fencing match conducted on a tightrope.'' *Bausch & Lomb,* 565 F.2d at 9.

[27] 445 U.S. 222 (1980).

[28] 463 U.S. 646 (1983).

[29] In *Dirks*, a securities analyst had been informed about a major fraud at Equity Funding of America by a former officer of the company. Although Dirks made an effort to make the fraud public, he also told his clients, enabling them to sell their Equity Funding securities and avoid losses when the fraud became publicly known. The Commission charged that Dirks was a ''tippee'' of the insider, and in turn tipped his clients.

[30] 463 U.S. at 663. On the facts of the case, the Court found that Dirks' source did not breach a duty in disclosing information to Dirks because he did not receive a personal benefit from the disclosure and was clearly motivated by a desire to expose the fraud. Because a tippee's duty is ''derivative'' from the duty of the tipper, and the insider source did not breach a duty, the Court held that Dirks did not violate Section 10(b) of the Exchange Act or Rule 10b-5.

[31] *SEC* v. *Phillip J. Stevens, supra* note 17 (allegation of personal benefit based on corporate official's desire to protect and enhance his reputation).

[32] *See, e.g.,* Paul P. Brountas Jr., *Note: Rule 10b–5 and Voluntary Corporate Disclosures to Securities Analysts,* 92 Colum. L. Rev. 1517, 1529 (1992).

treatment of large and small investors by, among other things, giving all investors timely access to the material information an issuer chooses to disclose. Therefore, we are today proposing new rules, which use a different legal approach, to address selective disclosure.

The approach we propose does not treat selective disclosure as a type of fraudulent conduct or revisit the insider trading issues addressed in *Dirks.* Rather, we propose to use our authority to require full and fair disclosure from issuers, primarily under Section 13(a) of the Exchange Act, as a basis for proposed Regulation FD. This Regulation is designed as an issuer disclosure rule, similar to existing Commission rules under Exchange Act Sections 13(a) and 15(d).[33] We believe this approach would further the full and fair public disclosure of material information, and thereby promote fair dealing in the securities of covered issuers.

B. Description of Proposed Regulation FD

Rule 101 of Regulation FD sets forth the basic rule regarding ''selective disclosure.'' Under this Rule, whenever:

(1) an issuer, or any person acting on its behalf,

(2) discloses material nonpublic information

(3) to any other person outside the issuer,

(4) the issuer must

(a) simultaneously (for intentional disclosures), or

(b) ''promptly'' (for non-intentional disclosures)

(5) make public disclosure of that same information.

Several definitional and other provisions in the Regulation establish the scope and effect of the general rule. As a whole, the Regulation would require that whenever an issuer makes an intentional disclosure of material nonpublic information, it must do so in a manner that provides general public disclosure, rather than through a selective disclosure. In the case of an unintentional selective disclosure, the issuer must make full public disclosure promptly after it learns of the selective disclosure. Regulation FD does not mandate that issuers make public disclosure of all material developments when they occur. What it does require, however, is that when an issuer chooses to disclose material nonpublic information, it must do so broadly to the investing public, not selectively to a favored few.

[33] 15 U.S.C. 78m(a) and 78o(d).

The key provisions of the Regulation are discussed in greater detail below.

1. Disclosures by ''An Issuer or Person Acting on its Behalf''

Regulation FD applies to all issuers with securities registered pursuant to Section 12 of the Exchange Act, and those issuers required to file reports under Section 15(d) of the Exchange Act, including closed-end investment companies but not including other investment companies.[34] It would apply not only to a selective disclosure formally made in the name of the issuer, but also to a selective disclosure made by a ''person acting on behalf of an issuer.'' This term is defined by Rule 101(c) as any officer, director, employee, or agent of the issuer who discloses material nonpublic information while acting within the scope of his or her authority.

The definition of ''person acting on behalf of an issuer'' distinguishes between cases where a properly authorized employee or agent of the issuer makes a selective disclosure, and cases where an employee or agent discloses material nonpublic information for his or her own benefit—*i.e.*, provides a ''tip'' that would violate Rule 10b–5 if securities trading ensued. This distinction means that the issuer would not automatically be liable under Regulation FD (or be responsible for making simultaneous or prompt public disclosure) whenever one of its employees or agents improperly trades or tips.[35] The Rule also would not apply if an official disclosed information to another person who owed him or her a duty of trust or confidence—such as a medical professional. By focusing on employees and agents acting within the scope of their authority, the Rule would make an issuer responsible only for the disclosures of company officials, employees, or agents who are properly authorized or designated to speak to the media, the analyst community, and/or investors.

We request comment on this approach. Is the definition of ''person acting on behalf of an issuer'' appropriate? Should it be narrower—for example, limited to executive officers and directors, and persons acting on their behalf? Or should it be broader, to prevent evasion—for example, covering any person authorized to act on behalf of the issuer?

[34] *See* Proposed Rule 101(b).

[35] The proper response in this type of case is to hold the employee or agent responsible for illegal insider trading, not to force the issuer to make a public disclosure due to the misconduct of one of its employees or agents.

2. Disclosure of Material Nonpublic Information

Regulation FD addresses the selective disclosure of ''material nonpublic information.'' The Regulation does not define the term ''material,'' but instead relies on the same definition as is generally applicable under the federal securities laws: information is material if ''there is a substantial likelihood that a reasonable shareholder would consider it important'' in making an investment decision, or if it would have ''significantly altered the 'total mix' of information made available.''[36]

We recognize that materiality judgments can be difficult. Corporate officials may therefore become more cautious in communicating with analysts or selected investors, or may feel compelled to consult with counsel more frequently about their ability to respond to questions from analysts and investors. We understand that these communications take many forms, including unrehearsed question-and-answer sessions, and responses to unsolicited inquiries. We are mindful of the potential burdens of requiring instant materiality judgments to be made by those put in the position of responding immediately to questions.

We believe that these concerns are significant but can be mitigated in several ways, many of which involve practices already in place at many issuers.[37] First, issuers can designate a limited number of persons who are authorized to make disclosures or field inquiries from analysts, investors, or the media. Second, issuers can make sure that some record is kept of the substance of private communications with analysts or selected investors—for example, by having more than one person present during these contacts or by recording conversations. Third, issuer personnel can decline to answer questions that raise issues of materiality until they have had an opportunity to consult with others. Fourth, issuer personnel can secure the agreement of analysts not to make use of certain information for a limited time until they have had the opportunity to review their notes of the conversation and engage in whatever consultation they deem necessary to reach a conclusion as to

[36] *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 449 (1976); *see Basic v. Levinson,* 485 U.S. 224, 231 (1988); *see also* Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b–2, 17 CFR 240.12b–2; Staff Accounting Bulletin No. 99 (Aug. 12, 1999) (64 FR 45150) (discussing materiality for purposes of financial statements).

[37] *See NIRI Corporate Disclosure Study, supra* note 11.

materiality;[38] then, if the issuer determines that public disclosure of the information is necessary, it can do so. Finally, and most importantly, as described in greater detail below, the Regulation recognizes that issuers may sometimes unintentionally make a selective disclosure of material nonpublic information, and it treats such unintentional disclosures differently from cases in which the issuer makes a planned selective disclosure.

We also believe that a heightened awareness of materiality issues may well have overall benefits to the disclosure process. Senior corporate officials who are responsible for dealing with analysts, investor relations, and disclosure issues already should be sensitive to materiality questions. When particularly difficult issues arise, responsible officials should seek the advice of counsel. Though it is likely that this Regulation will require corporate officials to consider more thoughtfully precisely what to disclose, it is unlikely, given the robust, active capital market, that the flow of information to the market will be significantly chilled.

Although materiality issues do not lend themselves to a bright-line test, we believe that the majority of cases are reasonably clear. At one end of the spectrum, we believe issuers should avoid giving guidance or express warnings to analysts or selected investors about important upcoming earnings or sales figures; such earnings or sales figures will frequently have a significant impact on the issuer's stock price. At the other end of the spectrum, more generalized background information is less likely to be material. We request comment on whether use of the procedures discussed above or similar procedures can significantly reduce the risk of ''chilling'' the flow of corporate information to the marketplace.

The Regulation also does not specifically define the term ''nonpublic.'' It is well established that information is nonpublic if it has not been disseminated in a manner making it available to investors generally.[39] In order to make information public, ''it must be disseminated in a manner calculated to reach the securities market place in general through recognized channels of distribution, and public investors must be afforded a reasonable waiting period to react to the information.''[40] The Regulation does specify means by which ''public disclosure'' is to be made.[41] We request comment on whether to rely on existing standards for the term ''nonpublic.'' Should we provide further guidance, or is the specific definition of ''public disclosure'' provided in Rule 101(e) sufficient?

3. Selective Disclosure ''To Any Other Person Outside the Issuer''

Rule 100(a) covers selective disclosures made to ''any person or persons outside the issuer.'' Therefore, the Rule would not apply to communications of confidential information by officials and employees of issuers to each other. Only selective disclosures to outsiders, such as analysts or selected investors, are covered by the Regulation.

To make clear the scope of the Regulation, paragraph (b) of Rule 100 expressly states that the Rule does not apply to disclosures of material information to persons who are bound by duties of trust or confidence not to disclose or use the information for trading. Paragraph (b) expressly refers to several types of persons whose misuse of the information would subject them to insider trading liability under Rule 10b–5: (1) ''temporary'' insiders of an issuer—*e.g.*, outside consultants, such as its attorneys, investment bankers, or accountants;[42] and (2) any other person who has expressly agreed to maintain the information in confidence, and whose misuse of the information for trading would thus be covered either under the ''temporary insider'' or ''misappropriation'' theory.[43]

This approach recognizes that issuers and their officials may properly share material nonpublic information with outsiders when those outsiders agree to keep the information confidential. This would permit issuers to discuss confidential strategies or plans with outsiders, as necessary for business purposes, without need to make public disclosure under this Rule. For example, issuers could share material nonpublic information with other parties to a business combination transaction or with a purchaser in a private placement without having to make public disclosure if the party receiving the information agrees to hold the information in confidence. Similarly, if it served an issuer's corporate interests to make disclosure of material information to selected analysts—for example, to give the analysts sufficient time to analyze complex information before its public release, or to solicit analysts' views on a business strategy under consideration—it could do so, provided that the recipients of the information expressly agreed not to use the information and to keep it confidential prior to public disclosure. Such a confidentiality agreement would also include an agreement not to trade on the nonpublic information.

We request comment on whether the proposed Regulation covers the appropriate categories of persons. Should other types of persons be enumerated in Rule 100(b) as proper recipients of material nonpublic information? By permitting disclosures to outsiders who agree to confidentiality requirements, does the Regulation adequately permit issuers to engage in legitimate business communications with customers or suppliers, potential co-venturers, and others? Would purchasers in private offering who receive material nonpublic information be willing to sign confidentiality agreements? How would this affect the resale market for private offerings and the flow of information in these transactions? Would the proposals reduce liquidity in the 144A market? How should the Regulation account for practices in this market? Should we require that confidentiality agreements take any specific form—i.e., be written—or include certain required provisions?

4. Timing of Public Disclosure Required by Regulation FD

An important provision of Regulation FD is that the timing of required public disclosure differs depending on whether the issuer has made an ''intentional'' or a ''non-intentional'' selective disclosure.

When an issuer makes an ''intentional'' disclosure of material nonpublic information, Rule 100(a)(1) requires the issuer to publicly disclose the same information simultaneously. In effect, this requirement for simultaneous disclosure means that issuers cannot engage in an intentional selective disclosure consistent with the terms of Regulation FD.

Under the definition provided in Rule 101(a), a selective disclosure is

[38] If a person receives material nonpublic information subject to such a confidentiality agreement, the use or disclosure of the information for securities trading purposes will lead to insider trading liability under Rule 10b–5.

[39] *See, e.g., Texas Gulf Sulphur,* 401 F.2d at 854; *In re Investors Management Co.,* 44 S.E.C. 633, 643 (1971).

[40] *Faberge, Inc.,* 45 S.E.C. 249, 255 (1973). Thus, for purposes of insider trading law, insiders must wait a ''reasonable'' time before trading. What constitutes a reasonable time prior to trading depends on the circumstances of the dissemination. *Id., citing Texas Gulf Sulphur,* 401 F.2d at 854.

[41] *See, infra* Section II.B.5.

[42] ''Classical'' insiders—an issuer's officers, directors, or employees—are of course also subject to duties of trust and confidence and to Rule 10b–5 insider trading liability if they trade or tip.

[43] *United States* v. *O'Hagan,* 521 U.S. 642 (1997); *Dirks,* 463 U.S. at 655 n.14.

''intentional'' when the individual making the disclosure either knew prior to making the disclosure, or was reckless in not knowing, that he or she would be communicating information that was material and nonpublic. This definition would cover, for example, situations where an issuer official determined to hold a conference call or meeting that excluded the public, or selectively contacted a particular analyst or investor, to disclose material nonpublic information. The individual making the disclosure must know (or be reckless in not knowing) that the information he or she is going to disclose is both material and nonpublic. Thus, for example, a communication would not be ''intentional'' under this Rule if it was disclosed inadvertently through an honest slip of the tongue, or because the individual mistakenly (but not in reckless disregard of the truth) believed that the information had already been made public.

Under Rule 100(a)(2), when this type of ''non-intentional'' disclosure of material nonpublic information occurs, the issuer is required to make public disclosure promptly. In this situation, because the disclosure was unplanned, the Rule does not require simultaneous public disclosure. Instead, the Rule requires ''prompt'' public disclosure, with ''promptly'' defined to mean ''as soon as reasonably practicable'' (but no later than 24 hours) after a senior official of the issuer knows (or is reckless in not knowing) of the non-intentional disclosure.[44] ''Senior official'' is defined as any executive officer of the issuer, any director of the issuer, any investor relations officer or public relations officer, or any employee possessing equivalent functions.[45]

By creating a separate requirement for ''prompt'' public disclosure in the case of a non-intentional selective disclosure, the Rule recognizes that corporate officers may sometimes make mistakes without the intent to selectively disclose material nonpublic information. When mistakes are made, absent intent or recklessness, we do not believe that the issuer should be held in violation of Regulation FD for not having made simultaneous public disclosure.[46]

If, however, an inadvertent selective disclosure of material information occurs, the issuer must take prompt ''corrective'' action when it knows (or is reckless in not knowing) that the disclosure of material information has occurred. The requirement to take corrective action arises when a senior official of the issuer (as defined above) becomes aware of the selective disclosure.[47] When that occurs, the issuer is required to act ''as soon as reasonably practicable'' to make full public disclosure of the information that has been selectively disclosed.[48]

We request comment on the distinction between ''intentional'' and ''non-intentional'' disclosures for purposes of the timing of public disclosure. Does the proposed definition of ''intentional'' disclosure draw the appropriate distinction? Does the definition of ''promptly'' provide an appropriate time period for the required public disclosure? Should the time period be shorter (*e.g.*, same trading day); or longer (*e.g.*, next business/trading day or 48 hours later)? Is the definition of senior official appropriate, or should it be narrower (*e.g.*, executive officers only) or broader (*e.g.*, all employees)?

5. Definition of ''Public Disclosure''

Rule 101(e) defines the type of ''public disclosure'' that will satisfy the requirements of the Regulation. This definition provides issuers with considerable flexibility in determining how to make the required public disclosure.

In general, the Rule states that issuers can comply with the ''public disclosure'' requirement by filing a Form 8–K with the Commission containing the information (or, in the case of foreign private issuers, by filing a Form 6–K).[49] We are proposing to add a new Item 10 to Form 8–K for disclosures made under Regulation FD. Should we permit issuers to make Regulation FD disclosures on existing Item 5 of Form 8–K as an alternative to proposed new Item 10? Item 5 is not confined to material disclosures; accordingly, if a registrant used Item 5 it would not acknowledge that the information disclosed was necessarily material. Is this a preferable approach?

As alternatives to making a Commission filing, the Rule permits an issuer to choose other methods of public disclosure. Under Rule 101(e)(2), an issuer will be exempt from the filing requirement if it uses one of the following alternative methods of public disclosure:

- First, an issuer could make public disclosure by disseminating a press release containing the information through a widely circulated news or wire service. Under current practice and SRO rules, corporate issuers typically provide press releases to services such as Dow Jones, Bloomberg, Business Wire, PR Newswire, or Reuters. Any of these services would continue to be a satisfactory means of making public disclosure.
- Second, an issuer could make public disclosure by disseminating information through any other method of disclosure that is reasonably designed to provide broad public access, and does not exclude access to members of the public—such as announcement at a press conference to which the public is granted access (for example, by personal attendance or by telephonic or electronic transmission). In order to afford broad public access, an issuer must provide notice of the disclosure in a form that is reasonably available to investors.

As noted above, current technology provides various means that issuers can use to transmit announcements and press conferences to the public. The Rule would not require use of any particular technological means, but would give issuers their choice of any method that did not limit public access to announcements and conferences.

An additional method for issuer dissemination of material information is posting the information on the issuer's website.[50] We encourage issuers who maintain websites to post information

[44] Proposed rule 101(d)(1). Although requirements for ''prompt'' disclosure exist elsewhere in the securities laws—*e.g.*, the requirement that amendments to Schedules 13D be filed ''promptly''—Proposed Rule 101(d)(1) defines ''prompt'' disclosure for purposes of Regulation FD. This definition is not meant to apply in any other contexts.

[45] *See* Proposed Rule 1010(d)(2). For closed-end investment companies that are subject to Regulation FD, the term ''senior official'' would also cover directors, officers, and employees of the fund's investment adviser.

[46] Of course, a pattern of ''mistaken'' selective disclosures would make less credible the claim that any particular disclosure was not intentional.

[47] For example, a senior official may become aware of his mistake when he sees a significant change in the market price and/or trading volume of his company's securities. Alternatively, a senior official might learn that a lower-level employee mistakenly disclosed material information, because an analyst or investor who received the information called the officer to confirm the information.

[48] Proposed Rule 101(d)(1) states that the required public disclosure must be made no later than 24 hours after the issuer or a senior official of the issuer knows (or is reckless in not knowing) of the selective disclosure. The 24-hour period takes into account the issuer's potential difficulty in making the disclosure any sooner because of the need to marshal all the information necessary, and reach the appropriate personnel. In other cased, however, the issuer may well be able to make public disclosure before the maximum allowable 24-hour disclosure period. In such cases, the requirement to disclose ''as soon as reasonably practicable'' means that the issuer should act sooner than 24 hours later.

[49] Proposed Rule 101(e)(1).

[50] *See NIRI Corporate Disclosure Study, supra* note 11, at 9, 21 (finding that 82% of responding issuers used their websites to post disclosures of quarterly finanical results).

on their websites whenever they make public disclosure through one of the means described above. However, the proposed Rule would not consider a website posting by itself to be a sufficient means of public disclosure.[51] Will this limitation make issuers less willing to post information on their websites?

We request comment on the proposal's approach for making public disclosure. We acknowledge that filings on EDGAR may only be made during specified hours, and only on business days of the Commission. In the case of filings permitted to be made in paper (as in the case of foreign private issuers), there are similar constraints because of our filing desk hours. Therefore, when an issuer is required to make public disclosure within 24 hours, the timing of a weekend or holiday may mean that EDGAR filing is not an available method of public disclosure. Issuers would therefore have to use one of the other methods. We solicit comment on whether this approach is workable, or whether we should alter the timing requirements of the Rule so that filing is always an available method. How else can we promote issuer flexibility and investor access?

We are also considering whether to require a delayed filing of a Form 8–K (within two business days) when an issuer chooses one of the other methods of making public disclosure. This would ensure that the information is part of the Commission's public files. Should we adopt this alternative approach? If so, is two business days the appropriate time period, or should it be shorter (*e.g.*, one business day) or longer (*e.g.*, five business days)?

Are the current technologies that we discuss available to all issuers? Are they prohibitively costly? Would they provide all investors with sufficient access? Are there other methods of public disclosure that might be as effective as a press release or an open press conference? Should these methods be specified in the Rule? Would an open press conference alone provide adequate dissemination of information in all circumstances (*e.g.*, for smaller companies with less media or analyst coverage)? Should we require that information be posted on an issuer's website, if it has one, in addition to the other methods of publicizing the information?

[51] Despite the rapid expansion of Internet access, a significant number of households do not have access. Moreover, simply putting information on a website does not alert investors that it is available.

6. Issuers Covered by the Regulation

Regulation FD would apply to all issuers with securities registered under Section 12 of the Exchange Act, and all issuers required to file reports under Section 15(d) of the Exchange Act, including closed-end investment companies but not including other investment companies. Are there any categories of issuers that should not be included? Should we have different and/or modified rules for small business issuers? If so, what modifications are warranted?

We are proposing to apply Regulation FD to foreign private issuers that are subject to the reporting requirements of the Exchange Act, although these foreign issuers would be permitted to make filings under the Regulation on Form 6–K rather than Form 8–K.[52] The vast majority of these issuers have subjected themselves to such reporting requirements by their election to access U.S. markets. Most of the issuers have a class of securities listed on the New York or American Stock Exchanges, or are admitted to trading on the Nasdaq Stock Market. The listing standards of these markets make no distinction between domestic and foreign issuers in requiring timely disclosure of material information.[53]

The content and timing of submissions on Form 6–K currently are based on a foreign private issuer's disclosure obligations and practices in its home jurisdiction and in any other jurisdiction where its securities are listed. We recognize that this Rule proposes for the first time to add a substantive disclosure requirement to Form 6–K, thereby changing the fundamental character of the form. We understand that some foreign issuers may view Regulation FD as requiring a change in what they consider to be normal communications with major shareholders, analysts, the press, labor unions, and other constituencies. In many cases, the disclosure requirements of Regulation FD also will impose a translation requirement on the information disclosed to the public and/or filed on Form 6–K. On the other hand, the benefits of the proposal to shareholders in all markets, not just the U.S. capital markets, may warrant the additional steps required of foreign issuers.

Regulation FD permits issuers to use other means for publicly disseminating non-intentional selective disclosures as alternatives to Forms 8–K or 6–K. Under current Form 6–K requirements, however, foreign private issuers are required to submit a Form 6–K containing any material information that is disseminated publicly, promptly after the dissemination. As proposed, foreign private issuers would not have to file a Form 6–K if they use one of the alternative means of disclosure permitted by Regulation FD.

We note that Forms 6–K are not currently required to be filed on EDGAR, which may impede investor access to information. Does this limitation make the requirement to file on Form 6–K less useful? If so, how should we address this issue?

We request comment on the proposed coverage of Regulation FD. Would it be appropriate to exempt all foreign private issuers from compliance with Regulation FD? If so, what would be the basis for this exemption and how would we address the impact on U.S. investors of having different requirements for selective disclosures by U.S. issuers and foreign private issuers? Would it be more appropriate to limit the application of Regulation FD to only certain foreign private issuers, such as those issuers with equity securities listed on a registered national securities exchange or the Nasdaq Stock Market National Market System, or foreign private issuers whose number of U.S. shareholders or volume of trading in our capital markets exceeds certain levels? If so, what levels should trigger the application of Regulation FD? Are there other ways the proposal could be modified to reduce the burden on foreign private issuers? Should foreign and domestic issuers be treated similarly with respect to the application of Section 18 to Regulation FD disclosure?

We are proposing to apply Regulation FD to closed-end investment companies, but not other types of investment companies. Investment companies that are continually offering their securities to the public already are required to update their prospectuses to disclose material changes subsequent to the effective date of the registration statement or any post-effective amendment, and are not permitted to sell, redeem, or repurchase their securities except at a price based on their securities' net asset value. While we believe that Regulation FD would offer little additional protection to investors in these types of investment companies and therefore they should be excluded from its coverage, these considerations do not apply in the case of closed-end investment companies.

[52] As is the case currently, Form 6–K used to mkae Regulation FD disclosure would not be deemed to be ''filed'' for purposes of Section 18 of the Exchange Act or subject to liability under that section.

[53] *See supra* note 10.

We are thus proposing to include closed-end investment companies within the requirements of Regulation FD.

At present, no form used by registered closed-end investment companies is equivalent to Form 8–K. In order to provide closed-end investment companies with the same disclosure options under Regulation FD available to operating companies, we propose to permit registered closed-end investment companies to file on Form 8–K for the sole purpose of making the public disclosure required by Regulation FD. The Commission does not intend by this rule proposal to otherwise require registered investment companies to file on Form 8–K.[54]

We request comment on whether any investment companies should be covered by Regulation FD, and if so, which types of investment companies should be covered. Commenters should address whether there are specific types of information relating to investment companies that could be the subject of problematic selective disclosure (*e.g.,* the impending departure of a portfolio manager who is primarily responsible for day-to-day management of the fund, or information relating to the fund's portfolio investments). We also request comment on whether it is appropriate for closed-end investment companies to file on Form 8–K for purposes of making disclosure under Regulation FD, and whether there should be a separate Item 11 for closed-end investment companies making disclosure on Form 8–K, so that members of the public can easily distinguish filings by closed-end investment companies from those of operating companies. Commenters that oppose the use of Form 8–K by closed-end investment companies should discuss other methods for obtaining equivalent disclosure from those companies.

7. Liability Issues and Securities Act Implications

Regulation FD is an issuer disclosure rule that is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act. It is not an antifraud rule, and unlike other Section 13(a) and 15(d) reporting requirements, it is not intended to create duties under Section 10(b) of the Exchange Act or any other provision of the federal securities laws. As a result, no private liability will arise from an issuer's failure to file or make public disclosure.[55]

If an issuer fails to comply with Regulation FD, however, it will be subject to an SEC enforcement action.[56] We could bring an administrative action seeking a cease and desist order, or a civil action seeking an injunction and/or civil money penalties.[57] In appropriate cases, we could also bring an enforcement action against the individual(s) at the issuer responsible for the violation, either as ''a cause of'' the violation in a cease and desist proceeding,[58] or as an aider and abetter of the violation in an injunctive action.[59]

In addition, Regulation FD does not affect or undermine any existing bases of liability under Rule 10b–5. Thus, for example, liability for ''tipping'' under Rule 10b–5 may still exist if a selective disclosure is made in circumstances that meet the *Dirks* ''personal benefit'' test.[60] In addition, an issuer's failure to make a public disclosure still may give rise to liability under a ''duty to correct'' or ''duty to update'' theory in certain circumstances.[61] And in other cases, an issuer's contacts with analysts may lead to liability under the ''entanglement'' or ''adoption'' theories.[62]

Moreover, if an issuer's filing or public disclosure made under Regulation FD contained false or misleading information, or omitted material information, the issuer could incur liability for those misstatements or omissions. Rule 10b–5 would apply to any materially false or misleading statements made to the public, and if an issuer had filed a Form 8–K containing false or misleading information, Section 18 of the Exchange Act[63] would apply as well. If a Form 8–K filed under Regulation FD was required to be incorporated into an issuer's registration statement, it would be subject to liability under Section 11 of the Securities Act.[64] If the public disclosure is not filed on a Form 8–K, it may nevertheless be subject to Section 11 liability if the information is otherwise required to be included in a registration statement subject to Section 11.

As noted above, Regulation FD applies only to issuers that have securities registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of that Act. Accordingly, the Regulation would not apply during an issuer's initial public offering (IPO) of its securities prior to effectiveness of the registration statement.[65]

The proposed Regulation would, however, apply to disclosures made by reporting issuers while they have pending registration statements for securities offerings. For example, the Regulation would apply to statements made in a ''roadshow'' for a reporting issuer's offering. In that situation, if an issuer made oral selective disclosure of material information, Regulation FD would require the issuer also to make public disclosure of the same information. This would be a departure from current distinctions in the Securities Act between oral and written communications around the time of an offering.[66]

The required public disclosure could also be considered an ''offer'' of the securities for purposes of Section 5 of

[54] Business development companies (''BDCs''), a category of closed-end investment companies not required to register under the Investment Company Act, are already required to file reports on Form 8–K. Under this proposal, BDCs would continue to be subject to Form 8–K filing obligations, including those imposed by Regulation FD.

[55] Courts have held that there is no implied private right of action under Section 13(a) of the Exchange Act. *Lamb* v. *Phillip Morris, Inc.*, 915 F.2d 1024 (6th Cir. 1990), *cert. denied*, 498 U.S. 1086 (1991); *J.S. Service Center Corp.* v. *General Electric Technical Services Co.*, 937 F. Supp. 216 (S.D.N.Y. 1996).

[56] In addition, eligibility to file on a number of ''short-form'' Securities Act registration statements requires, in part, that the registrant be timely in filing its Exchange Act reports. The obligation to be timely in these filings includes the filing of a required Form 8–K. As such, any required Form 8–K filing under proposed Item 10 would have to be made in a timely manner for the registrant to be eligible to file such a short-form registration statement. If, under today's proposals, the registrant would not be required to file under Item 10 of Form 8–K because it uses an alternative means of public dissemination, the failure to file an Item 10 Form 8–K would not affect that registrant's form eligibility.

[57] Regulation FD does not expressly require insurers to adopt policies and procedures to avoid violations, but we expect that most issuers will consider implementing appropriate disclosure policies to guard against selective disclosure. We are aware that many, if not most, issuers already have policies and procedures regarding disclosure practices, the dissemination of material information, and the question of which issuer personnel are authorized to speak to analysts, the media, or investors. The existence of this type of policy, and the issuer's general adherence to it, may often be relevant to determining the issuer's intent with regard to a selective disclosure.

[58] Section 21C of the Exchange Act, 15 U.S.C. 78u–3.

[59] Section 20(e) of the Exchange Act, 15 U.S.C. 78t(e).

[60] *See SEC* v. *Phillip J. Stevens, supra* note 17.

[61] *See generally Backman* v. *Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990); *In re Phillips Petroleum Sec. Litig.* 881 F.2d 1236 (3rd Cir. 1989).

[62] *See, e.g., Elkind* v. *Ligget & Myers, Inc.*, 635 F.2d 156 (2d Cir. 1980); *In the Matter of Presstek, Inc.* Exchange Act Release No. 39472 (Dec. 22, 1997).

[63] 15 U.S.C. 78r.

[64] 15 U.S.C. 77k. This proposal is not intended to change existing liability for forms incorporated by reference.

[65] After the registration statement for the IPO becomes effective, however, and the issuer becomes subject to Section 15(d) of the Exchange Act, it would be subject to Regulation FD.

[66] Our staff is currently engaged in a more comprehensive review of the regulatory issues raised by ''roadshows.''

that Act,[67] and when made by writing or broadcast could be considered a ''prospectus'' for purposes of section 2(a)(10) of the Act.[68] This creates the possibility that an issuer may violate sections 5(c) or 5(b)(1) of the Securities Act by making the public disclosures required by Regulation FD.

To permit an issuer that has already filed a registration statement to make the required public disclosure without violating section 5(b)(1) of the Securities Act, we are proposing new Rule 181 under the Securities Act. Under this Rule, any public disclosure required by Rule 100(a) of Regulation FD would not be required to satisfy the requirements of section 10 of the Securities Act[69] for a prospectus, as long as the disclosure was made in compliance with Regulation FD. We request comment on whether this Rule should apply only to non-intentional disclosures. Should we place other conditions on the use of this Rule—for example, requiring the material information to be included in the registration statement at the time it is declared effective?

A more difficult situation arises when a reporting company is planning an offering, but has not yet filed a registration statement. A company may find itself in the position of being required by Regulation FD to disclose to the public information which could constitute an ''offer'' of its securities prior to the filing of a registration statement, contrary to section 5(c). While companies are not supposed to make offers to anyone prior to filing a registration statement, an inadvertent disclosure of material nonpublic information to one person could result in an obligation to disclose information to the public, thus resulting in offers being made to many persons. If the company complies with the Regulation FD requirement in that situation, its disclosure would violate section 5(c), and subject it to liability under section 12(a)(1) if it proceeds with its offering. The public disclosure also could constitute a general solicitation and therefore preclude the company from undertaking a private exempt offering.

If the Commission were to adopt an exemption from section 5(c) for Regulation FD-required disclosure, however, companies could abuse that exemption to make public communications that hype an offering before filing a registration statement with the Commission. In that event, the balanced full disclosure, against which to test the hyping information, would not be available. The protections of section 5 could thus be eroded. While we have published proposals that, if adopted, would allow offers to be made prior to the filing of a registration statement in some offerings, those proposals did not extend to offerings by unseasoned companies to less sophisticated investors.[70] We proposed to retain the pre-filing prohibition on offers in those cases because of the continued need for this aspect of investor protection.

We request comment on whether we should also adopt an exemption from liability under section 5(c) of the Securities Act for communications made before the filing of a registration statement. If we do so, should the exemption apply only to non-intentional disclosures? Do the same reasons for providing a section 5(b)(1) exemption also apply to section 5(c), either for all issuers, or for offerings made by very large issuers or to more sophisticated investors? Or could a section 5(c) exemption provide issuers with such freedom to make public disclosures prior to filing a registration statement that issuers could engage in the hyping of an offering that Section 5(c) is designed to prevent?

With respect to the interplay between Regulation FD and the Securities Act, we request comment on the proposed approach described above. Should the Regulation also apply to issuers engaged in IPOs? Alternatively, given the liability questions under the Securities Act for these disclosures and the pending proposals in the Securities Act Reform release, should the Regulation not cover communications made as part of securities offerings under the Securities Act?

In our recent release on business combinations,[71] we adopted non-exclusive exemptions under the Securities Act, proxy rules, and tender offer rules that permit communications with respect to business combinations[72] for an unrestricted length of time without a cooling-off period between the end of communications and the filing of definitive disclosure documents. Those communication exemptions apply regardless of materiality, so long as the conditions to the exemption are satisfied. All written communications must be filed on the date of first use. Those communications must contain a prominent legend advising investors to read the registration, proxy, or tender offer statement, as applicable, when it becomes available. Under those rules, oral statements are not required to be reduced to writing and filed.

Proposed Regulation FD would impose requirements on material communications, written and oral, that are in addition to the filing and legend requirements of the new business combination rules. Any material information disclosed to the public, whether oral or written, would be required to be publicly disseminated by filing, press conference, news release, or otherwise.[73] Issuers may use confidentiality agreements to protect communications in the context of business combinations or other transactions which the issuers expressly mean to reserve from public disclosure. Early discussions among parties negotiating a transaction that are subject to confidentiality agreements among the parties and are kept confidential generally would not be subject to disclosure requirements of Regulation FD or the communications exemptions. Similarly, discussions between a party to a transaction and a security holder regarding a possible ''lock-up'' or other agreement generally would not be subject to these requirements so long as a confidentiality agreement is in effect.

Under current practice, parties negotiating a transaction do not always enter a confidentiality agreement, so Regulation FD may effect a change to current practice. Does this provide a practicable solution for parties seeking to negotiate transactions or to discuss ''lock-ups''?

III. Insider Trading Issues

The prohibitions against insider trading in our securities laws play an essential role in maintaining the fairness, health, and integrity of our markets. We have long recognized that the fundamental unfairness of insider trading harms not only individual investors, but also the very foundations of our markets, by undermining investor confidence in the integrity of the markets. Congress, by enacting two separate laws providing enhanced

[67] 15 U.S.C. 77e.

[68] 15 U.S.C. 77b(a)(10).

[69] 15 U.S.C. 77j.

[70] The Regulation of Securities Offerings, Securities Act Release No. 7606A (Nov. 13, 1998) (63 FR 67174). As discussed below, we also have adopted rules that allow offers in the business combination context to be made before filing a registration statement.

[71] Regulation of Takeovers and Security Holder Communications, Securities Act Release No. 7760 (Oct. 22, 1999) (64 FR 61408) (effective date Jan. 24, 2000).

[72] The proxy rule amendments are not limited to communications concerning business combinations.

[73] Written information must be disseminated by filing in order to satisfy the communication exemptions. A news release or other means of dissemination would not meet the requirements of the business combination rules.

penalties for insider trading,[74] has expressed its strong support for our insider trading enforcement program. And the Supreme Court in *United States* v. *O'Hagan* has recently endorsed a key component of insider trading law, the ''misappropriation'' theory, as consistent with ''an animating purpose'' of the federal securities laws: ''to insure honest securities markets and thereby promote investor confidence.'' [75]

Neither we nor Congress have expressly defined insider trading in a statute or rule. Instead, insider trading law has developed on a case-by-case basis under the antifraud provisions of the federal securities laws, primarily Section 10(b) of the Exchange Act and Rule 10b–5. As a result, from time to time there have been issues on which various courts have disagreed. With the Supreme Court's *O'Hagan* decision, the fundamental issues in insider trading law are now settled. Today's proposals address two issues on which disagreement remains.

A. Rule 10b5–1: Trading ''On the Basis of'' Material Nonpublic Information

1. Background

One unsettled issue in insider trading has been what, if any, causal connection must be shown between the trader's possession of inside information and his or her trading. In enforcement cases, we have argued that a trader may be liable for trading while in ''knowing possession'' of the information. The contrary view is that a trader will not be liable unless it is shown that he or she ''used'' the information for trading.

Until recent years, there has been little case law discussing this issue. Although the Supreme Court has variously described an insider's violations as involving trading ''on'' [76] or ''on the basis of'' [77] material nonpublic information, it has not addressed the use/possession issue. Three recent court of appeals cases address the issue, but have reached different results.

The three court of appeals cases recognize the practical difficulty of divorcing a trader's knowing possession, or awareness, of inside information from its ''use'' in a trade. In *United States* v. *Teicher*,[78] the Second Circuit suggested that ''knowing possession'' is sufficient to trigger insider trading liability, for precisely this reason.[79] In *SEC* v. *Adler*, the Eleventh Circuit held that ''use'' was the ultimate issue, but that proof of ''possession'' provides a ''strong inference'' of ''use'' that suffices to make out a *prima facie* case.[80] In *United States* v. *Smith*, the Ninth Circuit required that ''use'' be proven in a criminal case.[81]

The *Adler* court suggested that we could adopt a new rule or amend existing Rule 10b–5 to adopt a presumption approach or to provide for liability for trading while in ''knowing possession'' of material nonpublic information.[82] In view of the differing opinions expressed in the three cases discussed above, we agree that it would be useful to define the scope of Rule 10b–5, as it applies to the use/possession issue.

In our view, the goals of insider trading prohibitions—protecting investors and the integrity of securities markets—are best accomplished by a standard closer to the ''knowing possession'' standard. Whenever a person purchases or sells a security while aware of material nonpublic information that has been improperly obtained, that person has the type of unfair informational advantage over other participants in the market that insider trading law is designed to prevent.[83] As a practical matter, in most situations it is highly doubtful that a person who knows inside information relevant to the value of a security can completely disregard that knowledge when making the decision to purchase or sell that security. In the words of the Second Circuit, ''material information can not lay idle in the human brain.'' [84] Indeed, even if the trader could put forth purported reasons for trading other than awareness of the inside information, other traders in the market place would clearly perceive him or her to possess an unfair advantage.

On the other hand, we recognize that an absolute standard based on knowing possession, or awareness, could be overbroad in some respects. Sometimes a person may reach a decision to make a particular trade without any awareness of material nonpublic information, but then come into possession of such information before the trade actually takes place. A rigid ''knowing possession'' standard would lead to liability in that case. We believe, however, that for many cases of this type, a reasonable standard would not make such trading automatically illegal.

The *Adler* case attempted to balance these considerations by means of a ''use'' test with a strong inference of use from ''possession.'' We propose a somewhat different approach today: A general rule based on ''awareness'' of the material nonpublic information, with several carefully enumerated exceptions. We believe our proposed Rule would lead to the same outcome as *Adler* in almost all insider trading cases, but will provide greater clarity and certainty than a presumption or ''strong inference'' approach. Our proposed approach will better enable insiders and issuers to conduct themselves in accordance with the law.

2. Proposed Rule 10b5–1

Proposed Rule 10b5–1 is designed to address only the use/possession issue in insider trading cases under Rule 10b–5.

[74] Insider Trading Sanctions Act of 1984, Pub. L. No. 98–376, 98 Stat. 1264; Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677.

[75] *O'Hagan*, 521 U.S. at 658.

[76] *See Dirks*, 463 U.S. at 654.

[77] *See O'Hagan*, 521 U.S. at 651–52.

[78] 987 F.2d 112 (2d Cir), *cert. denied*, 510 U.S. 976 (1993).

[79] *Teicher* was a criminal case premised on the misappropriation theory of insider trading. The court reasoned, in *dicta*, that the simplicity of a ''knowing possession'' standard recognizes the informational advantage that a trader with inside information has over other traders. ''Unlike a loaded weapon which may stand ready but unused, material information can not lay idle in the human brain.'' *Id.* at 120.

[80] 137 F.3d 1325 (11th Cir. 1998). *Adler* was a civil action under ''classical'' insider trading theory. The court stated that trading while ''in possession of'' the material nonpublic information gives rise to a ''strong inference'' that the defendant ''used'' the information in trading, thereby allowing the Commission to establish a *prima facie* case based on possession of the information. The court reasoned that this inference addresses the Commission's proof difficulties by allowing the Commission to make out a *prima facie* case without establishing direct proof of a causal connection between possession of the information and its use. *Id.* at 1337–38. The defendant, however, has the opportunity to rebut this inference by introducing evidence to establish that the information was not used in making the trade. It is left to the fact finder to weigh the evidence to determine whether the information was used. *Id.* at 1337.

[81] 155 F.3d 1051 (9th Cir. 1998), *cert. denied*, 119 S. Ct. 804 (1999). *Smith* was a criminal case under ''classical'' insider trading theory. The court expressed no view on whether the *Adler* presumption could be permitted in a civil enforcement case. *Id.* at 1069 & n.27.

[82] ''We note that if experience shows that this approach unduly frustrates the SEC's enforcement efforts, the SEC could promulgate a rule adopting the knowing possession standard, as the SEC has done in the context of tender offers * * * or a rule adopting a presumption approach in which proof that an insider traded while in possession of material nonpublic information would shift the burden of persuasion on the use issue to the insider.'' *Adler*, 137 F.3d at 1337 n.33 (citation omitted).

[83] Under the classical theory, there is an additional argument why trading in ''possession'' of inside information is fraudulent. A ''classical'' insider has a fiduciary duty to the corporation's shareholders. The insider violates this duty, and thereby commits fraud, if he or she trades in the company's securities while in possession of inside information without disclosing the information to the other party. The insider violates this duty regardless of whether he or she ''uses'' the insider information. *See* Brief of the Securities and Exchange Commission at 22–24, *SEC* v. *Soroosh* (9th Cir. 1998) (No. 98–35006); Brief of the Securities and Exchange Commission at 18, *SEC* v. *Adler* (11th Cir. 1997) (No. 96–6084).

[84] *Teicher*, 987 F.2d at 120.

As the Preliminary Note states, the Rule does not modify or address any other aspect of insider trading law, which has been established by case law under Rule 10b–5.

Paragraph (a) sets forth the general prohibition of insider trading contained in existing case law. Under existing law, it is illegal to trade a security ''on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.'' [85] This language incorporates all theories of insider trading liability under the case law—classical insider trading, temporary insider theory, tippee liability, and trading by someone who misappropriated the inside information.[86]

Paragraph (b) defines trading ''on the basis of'' material nonpublic information. A trade is on the basis of material nonpublic information if the trader ''was aware of'' the information when he or she made the purchase or sale. Thus, the general rule is that ''awareness'' of the inside information inevitably leads to use of the information, and provides a sufficient basis for liability.

Paragraph (c) provides specific affirmative defenses against liability. A purchase or sale is not ''on the basis of'' information when a person can establish that one of four exclusive situations is true. These four defenses cover situations in which a person can show that the information he or she possessed was not a factor in the trading decision.

First, an affirmative defense is available if, before becoming aware of material nonpublic information, a person had entered into ''a binding contract'' to trade ''in the amount'' and ''at the price'' and on the date at which he or she ultimately traded.[87] This defense permits persons to carry out pre-existing contracts to purchase or sell a specified number (or dollar amount) of shares of a particular security at a specified price (or at the market price), as long as the person was not aware of material nonpublic information when he or she entered into the contract.[88]

Second, an affirmative defense is similarly available if, before becoming aware of material nonpublic information, a person ''had provided instructions to another person to execute'' a trade for the instructing person's account, ''in the amount, at the price, and on the date'' at which that trade was ultimately executed.[89] This defense would apply, for example, to an insider who instructs his or her broker to execute a plan to sell stock in accordance with Rule 144 at the expiration of a required holding period. If the insider provides the instructions without awareness of any material nonpublic information, the Rule would permit him or her to complete the previously instructed sales plan even if he or she later became aware of inside information.

Third, the Rule provides an affirmative defense if, before becoming aware of material nonpublic information, a person ''[h]ad adopted, and had previously adhered to, a written plan specifying purchases or sales of the security in the amounts, and at the prices, and on the dates at which the person purchased or sold the security.'' [90] This provision is designed to apply in the case of an insider who wishes to establish a regular, pre-established program of buying or selling his or her company's securities. If the plan is established before the insider is aware of material nonpublic information, and provides for specified trades at specified times, the insider will be permitted to engage in those trades even if he or she later becomes aware of material nonpublic information. As discussed below, plans of this type must be entered into in good faith, and not as part of a plan or scheme to evade insider trading prohibitions.[91]

Fourth, the Rule provides an affirmative defense for purchases or sales that result from a written plan for trading securities that is designed to track or correspond to a market index, market segment, or group of securities.[92] This defense would permit trading by an index fund, for example, where the fund's trading strategy was pre-established by the fund or its manager, even if the manager later became aware of material nonpublic information regarding one of the securities in the index. The defense would be available if the plan was sufficiently circumscribed to prevent trading decisions from being affected by the manager's later awareness of material nonpublic information.

The Rule provides one important limitation on the availability of all of the affirmative defenses. Paragraph (c)(1)(ii) states that a defense would be available only if a contract, plan, or instruction to trade relied on for a defense was entered into in good faith, and not as part of a plan or scheme to evade the prohibitions of this Rule. If a person changes a previous contract, plan, or instruction in any respect after becoming aware of material nonpublic information, he or she will lose any defense against liability. Thus, for example, if an insider enters into a contract or plan to sell 1,000 shares of his or her company's stock without being aware of material nonpublic information, then learns negative material nonpublic information and doubles his or her planned sale to 2,000 shares, he or she will lose the defense for the entire sale of 2,000 shares. Similarly, if the insider accelerates the timing of a planned sale in order to complete it before the release of negative corporate news that he or she has recently learned, he or she will have no defense for the transaction.

[85] Proposed Rule 10b5–1(a).

[86] *See United States* v. *O'Hagan*, 521 U.S. 642 (1997); *Dirks* v. *SEC*, 463 U.S. 646 (1983); *Chiarella* v. *United States*, 445 U.S. 222 (1980). In *O'Hagan*, the Supreme Court recognized that under the misappropriation theory of insider trading liability, the fraud is consummated when the defendant, without proper disclosure to the source, ''uses the information to purchase or sell securities.'' Proposed Rule 10b5–1 is consistent with this view in that it provides for no liability when a trader can meet one of the stated defenses in paragraph (c) demonstrating lack of use.

[87] Proposed para. (c)(1)(i)(A).

[88] Proposed para. (c)(1)(iii) defines the terms ''[i]n the amount(s)'' and ''[a]t the price(s)'' for purposes of all of paragraph (c)(1)(i)'s affirmative defenses. These definitions are designed to ensure that a contract, plan, or instruction is sufficiently defined to foreclose the use of any inside information of which the person later becomes aware. A trade specified ''in an amount'' must specify either the number of securities to be traded or the total monetary proceeds to be realized from or spent on the securities to be traded. Thus, a person could plan a sale of, for example, either 1,000 shares or $10,000 worth of stock; however, the person could not plan a trade within a range—for example, a sale of between 1,000 and 2,000 shares. The term ''at the price(s)'' includes a purchase or sale at the market price for a particular date. Therefore, persons would not be required to commit to trading at a particular price, but could merely contract, plan, or provide instructions to trade at the market price on the date of the trade.

Under the Rule, a defense would not be available for a contract, plan, or instruction to trade that used a limit order. By using a limit order, the person would not firmly be committing to make a trade, because if the market price at the relevant date exceeded the limit order price, the trade would not be made. We request comment on whether this restriction on the use of limit orders is necessary.

[89] Proposed para. (c)(1)(i)(B).

[90] Proposed para. (c)(1)(i)(C).

[91] This exception does not cover trading for a person's account through a ''blind trust.'' We have not included any express defenses for blind trust trading, because we do not believe this trading creates difficulties under existing insider trading law. When a person places securities in a blind trust, by definition he or she does not make the decisions to purchase or sell securities in that account. Therefore, those trading decisions (which are made by the trustee of the blind trust) should not be attributed to the person for purposes of potential insider trading liability.

[92] Proposed para. (c)(1)(i)(D).

Paragraph (c)(1)(ii) also specifies that a person will lose any defense for a trade if he or she enters into or alters a ''corresponding or hedging transaction or position'' with respect to the planned securities trade. This requirement is designed to prevent persons from devising schemes to exploit inside information by setting up pre-existing hedged trading programs, and then canceling execution of the unfavorable side of the hedge, while permitting execution of the favorable transaction. By altering the corresponding position, the insider would lose any defense for the transaction that he or she permitted to be executed.[93]

The Rule provides an additional, separate affirmative defense designed solely for entities that trade.[94] This defense is derived from the defense against liability currently provided in Exchange Act Rule 14e-3(b)[95] regarding insider trading in a tender offer situation. To meet this defense, an entity must demonstrate two things: first, that the individual(s) making the decision on behalf of the entity was not aware of the inside information; and second, that the entity had implemented reasonable policies and procedures (*e.g.*, informational barriers, restricted lists) to prevent insider trading.

3. Request for Comments

We request comments on all aspects of proposed Rule 10b5–1. Is the approach we propose—a general standard of ''awareness'' of the information, with specific affirmative defenses—the appropriate one? Are the proposed affirmative defenses appropriate? Should we provide additional defenses to liability, and if so, what should they be? Are the provisions defining the ''amount'' and ''price'' of pre-planned trades specific enough to permit plans to be made? Should we require written plans or instructions in all cases? Should we require that contracts, instructions, or trading plans be approved by counsel?

We also request comment on whether the defense for institutional traders is appropriate and adequate. Has this provision worked effectively for entities subject to Rule 14e-3? Is there any reason the same type of provision would not be adequate for this Rule?

[93] As a general matter, the Rule requires that any written plan specifying trading at a particular time must be made in good faith. Similarly, paragraph (c)(1)(i)(C) requires that a person have ''previously adhered to'' the written plan, as a means of demonstrating its bona fides.

[94] Proposed para. (c)(2).

[95] 17 CFR 240.14e–3(b).

B. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases

1. Background

In *United States* v. *O'Hagan*, the Supreme Court upheld the misappropriation theory of insider trading.[96] Under that theory, a person commits fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5 by misappropriating material nonpublic information for securities trading purposes, in breach of a duty of loyalty and confidence.

Certain types of business relationships by themselves provide the duty of trust or confidence necessary in a misappropriation theory case. In *O'Hagan*, for example, the attorney-client relationship established the duty of confidence. In other cases, the agency relationship inherent in an employer-employee relationship provides the duty.[97] It is not as settled, however, under what circumstances certain non-business relationships, such as family and personal relationships, may provide the duty of trust or confidence required under the misappropriation theory.

Two courts have considered this issue in criminal cases: *United States* v. *Chestman*[98] and *United States* v. *Reed*.[99] Although *Chestman* and *Reed* took into account common law notions of fiduciary and confidential relationships, they both took a relatively narrow view of when a duty of confidence exists in the context of criminal liability for insider trading.

In *Reed*, the court did not find a father-son relationship sufficient in itself to provide the required duty of confidence. But it stated that if family members have a prior history of sharing confidences, such that one family member has a reasonable expectation that the other will keep those confidences, there may be a sufficient relationship of trust and confidence. The final determination is left to the fact finder.[100]

In *Chestman*, a narrow majority of the Second Circuit *en banc*, while not overruling *Reed*, took a more restrictive view.[101] The *Chestman* majority held that marriage alone does not suffice to create a fiduciary relationship.[102] It stated that in the absence of an ''express agreement of confidentiality,'' or a ''pre-existing fiduciary-like relationship between the parties'' to a family relationship, there is not a sufficient basis for establishing the necessary duty to support a fraud conviction under the misappropriation theory.[103]

Chestman makes clear that its narrow approach, in contrast to the ''elastic'' definition of confidential relations employed by courts of equity in the civil context, was influenced by the criminal context of the case before it.[104] In our view, however, the *Chestman* majority's approach does not fully recognize the degree to which parties to close family and personal relationships have reasonable and legitimate expectations of confidentiality in their communications.[105] For this reason, we believe the *Chestman* majority view does not sufficiently protect investors and the securities markets from the misappropriation and resulting misuse of inside information.

We have investigated and prosecuted a large number of insider trading cases that involved trading by friends or family members of insiders. In many of these cases, the evidence supports the claim that the insider intended to give the information to the friend or family member for trading.[106] The evidence in

[96] 521 U.S. 642 (1997).

[97] *See e.g.*, *United States* v. *Carpenter*, 791 F.2d 1024, 1028 (2d Cir. 1986), *aff'd*, 484 U.S. 19 (1987); *SEC v. Materia*, 745 F.2d 197, 203 (2d Cir. 1984), *cert. denied*, 471 U.S. 1053 (1985); *United States* v. *Newman*, 664 F.2d 12, 15 (2d Cir. 1981), *aff'd after remand*, 722 F.2d 729, *cert. denied*, 464 U.S. 863 (1983).

[98] 947 F.2d 551 (2d Cir. 1991), *cert. denied*, 503 U.S. 1004 (1992).

[99] 601 F. Supp. 685 (S.D.N.Y.), *rev'd on other grounds*, 773 F.2d 447 (2d Cir. 1985).

[100] *Reed*, 601 F. Supp. at 717–18.

[101] Although the facts alleged in *Reed* were that the father and son had a prior history of sharing business confidences, 601 F. Supp. at 690 n.6, the *Reed* court's analysis states, without limitation to business confidences, that ''[t]he repeated disclosure of secrets by the parties or by one party to the other'' or a ''pre-existing confidential relationship'' could be sufficient to establish a duty of trust and confidence. *Id.* at 717–18. The *Chestman* majority, however, limited *Reed's* holding in a criminal context to its facts—that the repeated sharing of business confidences between family members could be the basis of a finding of a relationship of trust and confidence, the functional equivalent of a fiduciary relationship. *Chestman*, 947 F.2d. at 569.

[102] *Id. at 568.*

[103] *Id.* at 571

[104] *Chestman* recognized that although concern about the ''rule of lenity'' did not permit the use of ''an elastic and expedient definition of confidential relations'' in criminal cases, such an approach may be useful in the civil context. *Id.* at 570 *See also O'Hagan*, 521 U.S. at 679 (concurring and dissenting opinion of Scalia, J.) (noting applicability of ''principle of lenity'' in criminal insider trading prosecution, and potential distinction between criminal and civil construction of Rule 10b–5).

[105] *Cf. Chestman*, 947 F.2d at 580 (concurring and dissenting opinion of Winter, J.) (calling majority's view ''unrealistic'' in that ''it expects family members to behave like strangers to each other''). Nor does *Chestman* consider the recognition of a fiduciary duty between family members as a matter of common law or statutory enactments.

[106] *See, e.g.*, *SEC v. Michelle Nguyen, et al.*, Litigation Release No. 16199 (June 29, 1999); *SEC*

such cases supports liability under a classical tipper-tippee theory.[107]

In other circumstances, however, the evidence does not support the view that the disclosing insider intended or expected that the recipient of the inside information would trade. Instead, the evidence indicates that the insider confided the material nonpublic information to the friend or relation with the reasonable expectation that the recipient of the information would maintain the confidence. In those situations, a classical tipper-tippee theory of liability would probably not be available under the *Dirks* analysis. The misappropriation theory of liability would fit the facts better, because the trader breached a duty of confidentiality to the disclosing insider when he or she traded on the basis of the inside information. However, misappropriation liability is very difficult to establish in these situations under the restrictive analysis of *Chestman*, because *Chestman* appears to require either an express agreement of confidentiality, or a pre-existing fiduciary-like relationship that included the prior sharing of business confidences. Stated differently, under *Chestman*, it is not sufficient that the disclosing insider had a reasonable expectation of confidentiality based on his or her prior relationship with the trader.

Chestman thus leads to the following anomalous result. A family member who receives a ''tip'' (within the meaning of *Dirks*) and then trades violates Rule 10b–5. A family member who trades in breach of an express promise of confidentiality also violates Rule 10b–5. A family member who trades in breach of a reasonable and legitimate expectation of confidentiality, however, does not necessarily violate Rule 10b–5.

We think that this anomalous result harms investor confidence in the integrity and fairness of the nation's securities markets. The family member's trading has the same impact on the market and investor confidence in the third example as it does in the first two examples. In all three examples the trader's informational advantage ''stems from contrivance, not luck,'' and the informational disadvantage to other investors ''cannot be overcome with research or skill.'' [108] We believe that permitting the trader in the third example to trade legally is inconsistent with investors' expectations about what types of informational advantages can be properly exploited. Moreover, this result provides all trading family members—including those in the classical tipper-tippee example—with a roadmap for concocting a story that could provide a lawful explanation for the trading. Finally, the need to distinguish between the three types of cases may require an unduly intrusive examination of the details of particular family relationships.

Accordingly, we believe that there is good reason for the broader approach we propose today for determining when family or personal relationships create ''duties of trust or confidence'' under the misappropriation theory. Our proposed approach is not designed to interfere with particular family or personal relationships; rather, our goal is to protect investors and the fairness and integrity of the nation's securities markets against improper trading on the basis of inside information.

2. Proposed Rule 10b5–2

Proposed Rule 10b5–2 sets forth a non-exclusive definition of circumstances in which a person has a duty of trust or confidence for purposes of the ''misappropriation'' theory of insider trading under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder. As stated in the Preliminary Note to the Rule, the law of insider trading is otherwise defined by judicial opinions interpreting Rule 10b–5, and this Rule is not intended to address or modify the scope of insider trading law in any other respect.

Paragraph (a) states that the Rule applies to any cases based on the misappropriation theory of insider trading, whether involving trading or tipping. Paragraph (b) enumerates a non-exclusive list of circumstances under which a ''duty of trust or confidence'' shall exist.[109]

a. *Agreement Between the Parties.* First, whenever a person agrees to maintain information in confidence, a duty of trust or confidence exists.[110] This reflects the common-sense notion, acknowledged in *Reed* and *Chestman*, that reasonable expectations of confidentiality, and corresponding duties, can be created by an agreement between two parties. Although sometimes, most commonly in a business context, the parties will sign an express, written confidentiality agreement, the Rule does not require either a written or an express confidentiality agreement. This approach recognizes the fact that in everyday personal interactions, individuals frequently rely on reasonable, implicit understandings of confidentiality. In some situations, it may not be realistic or socially acceptable to insist that a close friend or relative execute a signed confidentiality agreement, or expressly consent to an oral agreement.

b. *Relationships With a History, Pattern, or Practice of Sharing Confidences.* Second, the Rule provides that a duty of trust or confidence exists when two people have a ''history, pattern, or practice of sharing confidences, such that the person communicating the material nonpublic information has a reasonable expectation that the other person would maintain its confidentiality.'' [111] This part of the Rule does not use a bright line test that enumerates specific relationships, but instead sets forth a ''facts and circumstances'' analysis derived from *Reed*. This standard recognizes that in some circumstances a past pattern of conduct between two parties will lead to a legitimate, reasonable expectation of confidentiality on the part of the confiding person. This analysis does not require that the history, pattern, or practice of sharing confidences include the sharing of business confidences for there to be a duty of trust or confidence for purposes of misappropriation liability. However, evidence about the type of confidences shared in the past might be relevant to determining the reasonableness of the expectation of confidentiality.

We request comments on the approach proposed in paragraph (b)(2). Does the requirement of a prior ''history, pattern, or practice'' of sharing confidences provide a sufficiently well-defined standard? Should other factors be relevant to the analysis as well?

c. *Enumerated Family Relationships.* Third, paragraph (b)(3) sets forth a bright line liability rule for certain enumerated close family relationships,

v. Bharat Kotecha, et al. Litigation Release No. 16151 (May 18, 1999); *SEC v. Hahn Truong, et al.*, Litigation Release No. 16080 (Mar. 9, 1999); *SEC v. Eugene Dines, et al.*, Litigation Release No. 13900 (Dec. 10, 1993); *SEC v. Steven L. Glauberman, et al.*, Litigation Release No. 12574 (Aug. 9, 1990).

[107] *See Dirks*, 463 U.S. at 664 (noting that tipping liability can exist ''when an insider makes a gift of confidential information to a trading relative or friend'').

[108] *O'Hagan*, 521 U.S. at 658–59.

[109] Proposed para. (b) does not enumerate relationships that existing case law already recognizes as providing a clear basis for misappropriation liability: for example, lawyer-client, *O'Hagan*; employee-employer, *Carpenter*; pshchiatrist-patient, *United States v. Willis*, 737 F. Supp. 269 (S.D.N.Y. 1990), *appeal dismissed*, 778 F. Supp. 205 (S.D.N.Y. 1991). As the *O'Hagan* case demonstrates, an individual working at a professional firm may be liable for misappropriating information about a particular matter even if he or she is not personally working on that matter.

[110] Proposed para. (b)(1).

[111] Proposed para. (b)(2).

but allows for an affirmative defense. Spousal, parent-child,[112] and sibling relationships would be sufficient in themselves as a basis for misappropriation theory liability. Our enforcement experience demonstrates that these are the relationships in which family members most commonly share information with a legitimate expectation of trust or confidentiality.[113] These also are normally the types of close familial relationships in which the parties have a history, pattern, or practice of sharing confidences that would lead to a reasonable expectation of confidentiality.

Paragraph (b)(3) permits the person receiving or obtaining the information to assert an affirmative defense by demonstrating that under the facts and circumstances of that particular family relationship, no duty of trust or confidence existed. To demonstrate this, the person must establish that the disclosing family member did not have a reasonable expectation of confidentiality because the parties had neither: (a) a history, pattern, or practice of sharing confidences; nor (b) an agreement or understanding to maintain the confidentiality of the information. If the person receiving or obtaining the information can satisfy the requirements of the affirmative defense set forth in paragraph (b)(3), he or she would not be liable under Rule 10b5–2.

Paragraph (b)(3) does not reach non-traditional relationships (*e.g.*, domestic partners) or more extended family relationships. However, paragraphs (b)(1) and (b)(2) could reach these relationships, depending on the factual context of the relationship. We request comment on whether this is an appropriate distinction.

Are the family relationships enumerated in paragraph (b)(3) the proper ones to cover, or is the list too narrow or too broad? Should the list of enumerated relationships be limited to family members residing in the same household? Should it expressly encompass step-parents and step-children? Should it expressly encompass non-traditional relationships, and if so, which ones? Should it include additional family relationships, such as the list of family relationships covered in our Section 16 rules?

3. *Request for Comments.* We request comment on all aspects of Proposed Rule 10b5–2. For non-enumerated relationships, does paragraph (b)(2) focus on the proper factors for determining whether a reasonable expectation of confidentiality exists? Is the approach of paragraph (b)(3)—a per se rule with an affirmative defense for certain enumerated family relationships—the most suitable one, or should a different standard be employed?

IV. General Request for Comments

We invite you to submit comments on proposed Regulation FD, Rule 10b5–1, and/or Rule 10b5–2. If you have empirical data relevant to proposed Regulation FD, Rule 10b5–1, or Rule 10b5–2, please include it with your comments. Please submit three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You may also submit comments electronically to the following e-mail address: rule-comments@sec.gov. Refer to File No. S7–31–99. If you are commenting by e-mail, include this file number on the subject line. We will make comments available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. In addition, we will post electronically submitted comment letters on our Internet Website (http://www.sec.gov).

V. Paperwork Reduction Act

Certain provisions of Regulation FD, and the related amendments to Form 8–K and Form 6–K under the Exchange Act, contain ''collections of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[114] and the Commission has submitted the proposal to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form 8–K (OMB Control No. 3235–0060)[115] was adopted pursuant to Sections 13, 15, and 23 of the Exchange Act. Form 8–K prescribes information, such as material events or corporate changes, that a registrant must disclose. Form 6–K (OMB Control No. 3235–0116)[116] was adopted pursuant to sections 13 and 15 of the Exchange Act. Form 6–K prescribes information that foreign private issuers subject to the reporting requirements of the Exchange Act must disclose. The Commission is also proposing to create a new information collection entitled ''Reg. FD—Other Disclosure Materials.'' This information collection will encompass press releases, webcasts, announcements, conference calls, etc. that are conducted pursuant to Regulation FD, which is proposed pursuant to sections 13, 15, 23, and 36 of the Exchange Act, and that are not filed under cover of Form 8–K or Form 6–K.

The Commission currently estimates that Form 8–K results in a total annual compliance burden of 140,500 hours. The burden was calculated by multiplying the estimated number of Form 8–K filings annually (approximately 28,100) by the estimated average number of hours each entity spends completing the form (approximately 5 hours). The Commission based the number of entities that would complete and file each of the forms on the actual number of filers during the 1999 fiscal year. The staff estimated the average number of hours each entity spends completing each of the forms by contacting a number of law firms and other persons regularly involved in completing the forms.

The Commission currently estimates that Form 6–K results in a total annual compliance burden of 91,848 hours and $515,000 non-labor burden costs. This was calculated by multiplying the estimated number of Form 6–K filings annually (approximately 11,481) by the estimated average number of hours each entity spends completing the form (approximately 8 hours) and adding the non-labor burden costs. The Commission based the number of entities that would complete and file each of the forms on the actual number of filers during the 1999 fiscal year. The staff estimated the average number of hours each entity spends completing each of the forms by contacting a number of law firms and other persons regularly involved in completing the forms.

We believe that the proposed Regulation is necessary to provide for fairer and more effective disclosure of issuer information to all investors and thereby bolster investor confidence in

[112] We do not intend to limit this to minor children. Our enforcement cases in this area typically involve communications between parents and adult sons or daughters.

[113] *See e.g., SEC* v. *Judy Hockett, et al.* Litigation Release No. 15377 (May 30, 1997) (spouse); *SEC* v. *Linda Lou Taylor, et al.*, Litigation Release No. 14775 (Jan. 4, 1996) (spouse); *SEC* v. *Robert J. Young, et al.* Litigation Release No. 14661 (Sept. 29, 1995) (brother); *SEC* v. *Jonathan J. Sheinberg, et al.*, Litigation Release No. 13465 (Dec. 10, 1992) (son-father); *SEC* v. *Thomas C. Reed, et al.*, Litigation Release No. 9537 (Dec. 23, 1981) (son-father).

[114] 44 U.S.C. 3501 *et seq.*

[115] 17 CFR 249.308.

[116] 17 CFR 249.306.

the securities markets. Under the proposed Regulation, issuers would be required to simultaneously (or, in some instances, promptly), upon first disclosure of material, nonpublic information, publicly disclose the information broadly. The disclosure could be made by filing a Form 8–K or Form 6–K with the Commission, disseminating a press release to a widely circulated news or wire service, or disseminating the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access.

We estimate that, on average, completing and filing a Form 8–K under proposed Regulation FD would require the same amount of time currently spent by entities completing the Form—approximately 5 hours. We estimate that, on average, completing and filing a Form 6–K under proposed Regulation FD would require the same amount of time spent completing Form 6–K—approximately 8 hours. As noted, however, under the proposed Regulation, companies are exempt from the requirement to file a Form 6–K or Form 8–K if they disseminate a press release to a widely circulated news or wire service or disseminate the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access. We estimate that other methods of disclosure, such as press releases and press conferences, will require no more than the preparation time of Form 8–K—less than 5 burden hours.

We anticipate that, under Regulation FD, companies will make five [117] disclosures per year.[118] Since there are approximately 14,000 companies affected by this Regulation, we estimate that there will be 70,000 additional disclosures per year under Regulation FD. Based on a burden hour estimate of five hours, we anticipate that companies will incur 350,000 additional burden hours under Regulation FD.[119]

Compliance with the disclosure requirements is mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–31–99. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–31–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

A. Regulation FD: Selective Disclosure

Proposed Regulation FD would require that when an issuer intentionally discloses material nonpublic information to any person outside the issuer, it must simultaneously make public disclosure, and when it unintentionally discloses material nonpublic information, it must promptly make public disclosure.

Proposed Regulation FD is intended to produce several important benefits to investors and the securities markets as a whole. First, Regulation FD will inhibit current practices of selective disclosure, which damage investor confidence in the fairness and integrity of the markets. One recent study indicates that analysts and institutional investors immediately use information received in conference calls to trade.[120] Traders on the other side of these transactions, who are excluded from the conference calls, do not have the same information as the more informed analysts and selected investors. Numerous individual investors have complained about this practice. By addressing selective disclosure of material information, the proposed Regulation will foster fairer disclosure of information to all investors, and thereby increase investor confidence in market integrity.

By enhancing investor confidence in the markets, we believe the proposed Regulation will encourage continued widespread investor participation in our markets, which will enhance market efficiency and liquidity, and foster more effective capital raising.

Second, we believe that issuers may also benefit from more open and fair disclosure practices. One study concluded that companies that more liberally disclose information have a larger analyst following, a narrower consensus in earnings estimates, and a low stock price volatility, which likely leads to a lower cost of equity capital.[121] Proposed Regulation FD would encourage these beneficial disclosure practices.

Third, the proposed Regulation likely will also provide benefits to securities analysts and others in the market for information. This Regulation will place all analysts on equal competitive footing with respect to access to material information. As well, this Regulation will allow analysts to express their honest opinions without fear of being denied access to valuable corporate

[117] In many cases, information disclosed under Regulation FD would be information that an issuer was ultimately going to disclose to the public. Under Regulation FD, that issuer likely will not make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad public access to the information and which does not exclude any members of the public from access.

[118] We anticipate that issuers will make one disclosure each quarter under Regulation FD. We also assume that issuers will, on average, make one additional disclosure per year.

[119] Although eight burden hours are incurred by issuers filing a Form 6–K, we assume that, since issuers have the option of how to make disclosure under Regulation FD, they will make disclosure under the least burdensome option. Therefore, our burden number for estimation purposes is five burden hours.

[120] *See supra* Section II.A. and note 15.

[121] *See* National Investor Relations Institute, *Standards of Practice for Investor Relations,* 7 (1st ed. Apr. 1998) (citing Russell Lundholm and Mark Lang, ''The Benefits of More Forthcoming Disclosure Practices,'' University of Michigan School of Business Administration, Ann Arbor, MI, 1994).

information.[122] Analysts will continue to be able to use and benefit from superior diligence or acumen, without facing the prospect that other analysts will have a competitive edge based solely on better access to corporate insiders.

We do not currently have sufficient information to quantify these or other benefits. We therefore request your comments, including supporting data, on the benefits of the Regulation.

The proposed Regulation would impose some costs on issuers. First, there will be some additional cost to publicly disclose material nonpublic information on a non-selective basis. This proposal gives issuers three options for making public disclosure. The issuer can: (1) File a Form 8–K [123] or Form 6–K;[124] (2) disseminate a press release containing the material nonpublic information through a widely circulated news or wire service; or (3) disseminate the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access (*e.g.*, teleconference, web-conference).

Because the Regulation does not require issuers to disclose material information (just to make any disclosure on a non-selective basis), we cannot predict with certainty how many issuers will actually make disclosures under this Regulation. For purposes of the Paperwork Reduction Act, however, we estimate that issuers will make five [125] public disclosures under Regulation FD per year.[126] Since there are approximately 14,000 issuers affected by this Regulation, we estimate that the total number of disclosures under Regulation FD per year will be 70,000.

If an issuer files a Form 8–K, we estimate that the issuer would incur, on average, five burden hours per filing. This estimate is based on current burden hour estimates under the Paperwork Reduction Act for filing a Form 8–K and the staff's experience with such filings. We believe that approximately 75% of the burden hours are expended by the company's internal professional staff, and the remaining 25% by outside counsel. Assuming a cost of $85/hour for in-house professional staff and $125/hour for outside counsel, we believe the total cost is $475 per filing.

If an issuer files a Form 6–K, we estimate that the issuer would incur, on average, eight burden hours per filing and other miscellaneous costs of $45 per filing. This estimate is based on estimates under the Paperwork Reduction Act for filing a Form 6–K and the staff's experience with such filings. We believe that approximately 75% of the burden hours are expended by the issuer's internal professional staff, and the remaining 25% by outside counsel. Assuming a cost of $85/hour for in-house professional staff and $125/hour for outside counsel, we believe the total cost is $805 per filing.

We have no hard data on which to base estimates of the costs of other disclosure options. However, we anticipate that other methods of disclosure, such as press releases, may require less preparation time than a Form 8–K. If the costs of the other methods of disclosure are less than the cost of filing the Form 8–K, we presume issuers will choose the other methods of public disclosure. Issuers may, however, choose to use methods of dissemination with higher out-of-pocket costs, presumably because they believe these methods provide additional benefits to the issuer or investor.

Given that we estimate that there will be 70,000 disclosures under Regulation FD per year at a cost of approximately $475 per disclosure,[127] we estimate that the total paperwork burden of preparing the information for disclosure per year will be approximately $33,250,000.

We request your comments, including supporting data, on our estimates of the costs of each disclosure option, the number of times a company will make a disclosure in a year, and which method companies are likely to use.

The proposed Regulation may also lead to some increased costs for issuers resulting from new or enhanced systems and procedures for disclosure practices. We believe that many, if not most, issuers already have internal procedures for communicating with the public; for many issuers, therefore, new procedures to prevent selective disclosures will not be needed. There might be a cost to these issuers, however, for enhancing and strengthening existing procedures to ensure that nonpublic material information is not inadvertently disclosed and for disclosing inadvertently released materials promptly. We do not have data to quantify the cost of enhancing and strengthening existing internal monitoring procedures, and we seek your comments and supporting data on these costs.

We are sensitive to the concern that the proposed Regulation might ''chill'' corporate disclosures to analysts, investors, and the media. Issuers may speak less often out of fear of a post hoc assessment that disclosed information was material. If the Regulation has such a chilling effect, there would be a cost to overall market efficiency. However, there are numerous practices that issuers may employ to continue to communicate freely with analysts and investors, while becoming more careful in how they disclose information. Moreover, the Regulation only covers the selective disclosure of material nonpublic information; the level of ''soft'' or non-material information available to the market need not decrease. As well, we believe issuers have strong reasons to continue releasing information, given the market demand for information and a company's desire to promote its products and services. Further, we note that, in light of existing SRO rules and disclosure practice guidance provided by organizations such as NIRI, many issuers are currently conducting their disclosure practices in a manner consistent with the proposed Regulation. In light of these factors, we request your comments on the effect the proposed Regulation will have on information flow. Please support your comments and conclusions with data.

Today's proposal is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act, and the Regulation does not create new duties under Section 10(b) of the Exchange Act. We nevertheless request comments on liability exposure, including the underlying case law if applicable, and we request your estimates of any costs that may result from increased risk of liability.

Are there other costs we have not identified? Please supply data to help us estimate the cost.

B. Proposed Rule 10b5–1: Trading ''On The Basis Of'' Material Nonpublic Information

Proposed Rule 10b5–1 would define when a sale or purchase of a security

[122] *See supra* Section 11.A and notes 18 & 19.

[123] 17 CFR 249.308.

[124] 17 CFR 249.306.

[125] We anticipate that issuers will make one disclosure each quarter under Regulation FD. We also assume that issuers will, on average, make one additional disclosure per year.

[126] In many cases, information disclosed under Regulation FD would be information that an issuer was ultimately going to disclose to the public. Under Regulation FD, that issuer is not going to make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad public access to the information and does not exclude any members of the public from access.

[127] While, as discussed, the staff estimates that filing a Form 6–K costs slightly more than filing a Form 8–K, fewer than 1,000 issuers filed Forms 6–K in fiscal 1999. Therefore, for estimation purposes, we are not accounting for this slightly higher cost in estimating the cost of other disclosure options.

occurred ''on the basis of'' material nonpublic information. Under the proposed Rule, a person trades ''on the basis of'' material nonpublic information if the person making the purchase or sale was aware of the material nonpublic information at the time of the purchase or sale. However, the proposed Rule provides affirmative defenses to liability when a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith.

We anticipate two significant benefits arising from proposed Rule 10b5–1. First, the Rule should increase investor confidence in the integrity and fairness of the market because it clarifies and strengthens existing insider trading law. Second, the proposed Rule will benefit corporate insiders by providing greater clarity and certainty on how they can plan and structure securities transactions. The Rule provides specific guidance on how a person can plan future transactions at a time when he or she is not aware of material nonpublic information without fear of incurring liability. We believe that this guidance will make it easier for corporate insiders to conduct themselves in accordance with the laws against insider trading. We seek your comments and supporting data on these or other benefits that we have not identified.

The Rule does not require any particular documentation or recordkeeping by insiders, although it would, in some cases, require a person to document a particular plan, contract, or instruction for trading if he or she wished to establish an affirmative defense that his or her trading was not ''on the basis of'' material nonpublic information. We therefore do not attribute any costs to this aspect of the proposed Rule. We seek comments and data on any costs that this Rule would impose.

C. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases

Proposed Rule 10b5–2 would enumerate three non-exclusive bases for determining when a person receiving information was subject to a duty ''of trust or confidence'' for purposes of the misappropriation theory of insider trading. Two principal benefits are likely to result from this Rule. First, the Rule will provide greater clarity and certainty to the law on the question of when a family relationship will create a duty of trust or confidence. Second, the Rule will address an anomaly in current law under which a family member receiving material nonpublic information may exploit it without violating the prohibition against insider trading. By addressing this potential gap in the law, the Rule would enhance investor confidence in the integrity of the market. We do not attribute any costs to this aspect of the proposed Rule. We seek comments and data on any costs that this Rule would impose.

VII. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[128] the Commission is requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a) of the Exchange Act[129] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. Because we do not believe the rules would affect companies differently, we do not believe that the proposals would have any anti-competitive effects. We request comment on any anti-competitive effects of the proposals.

In addition, section 3(f) of the Exchange Act[130] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We believe that the proposals would bolster investor confidence in the securities markets by improving both the actual and perceived equity of the information available to investors from all companies. Accordingly, the proposals should promote capital formation and market efficiency. We anticipate no impact on competition. We request comment on these matters.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed new Regulation FD, Rule 10b5–1, and Rule 10b5–2 under the Exchange Act, as amended. The proposed Regulation and Rules address the selective disclosure of material information and clarify two unsettled issues under current insider trading law.

A. Reasons for the Proposed Action

The proposed Rules address three separate issues. Regulation FD addresses the problem of issuers making selective disclosure of material nonpublic information to analysts or particular investors before making disclosure to the investing public. Rules 10b5–1 and 10b5–2 address two unsettled issues in insider trading case law: (1) whether the Commission needs to show that a defendant ''used'' material nonpublic information in an insider trading case, or merely that the defendant traded while in ''knowing possession'' of the information; and (2) when a family or other non-business relationship can give rise to liability under the misappropriation theory of insider trading. By addressing these issues, the proposals will enhance investor confidence in the fairness and integrity of the securities markets.

B. Objectives

Proposed Regulation FD would require that when an issuer intentionally discloses material nonpublic information it do so through public disclosure, not selective disclosure. When an issuer has made a non-intentional selective disclosure, Regulation FD would require the issuer to make prompt public disclosure thereafter. The proposed Regulation provides for several alternative methods by which an issuer can make the required public disclosure. We believe that this proposal will provide for fairer and more effective disclosure of important information by issuers to the investing public.

Proposed Rule 10b5–1 would resolve the unsettled case law on whether the Commission must prove that a defendant ''used'' or traded while in ''knowing possession'' of material nonpublic information in order to prove insider trading liability. The proposal would provide a general rule that liability arises when a person trades while ''aware'' of material nonpublic information. It provides four defenses against liability, in cases where a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith. It also provides a defense against liability for trading by entities, including small entities, when the individual making the trade was not aware of the information, and the entity had implemented reasonable procedures to prevent insider trading. We believe this proposed Rule would clarify an important issue in insider trading law, and thereby enhance investor confidence in market integrity.

[128] Pub. L. No. 104–121, tit. II, 110 Stat. 857.

[129] 15 U.S.C. 78w(a).

[130] 15 U.S.C. 78c(f).

Proposed Rule 10b5–2 would define when a non-business relationship, such as a family or personal relationship, may provide the duty of trust and confidence required under the misappropriation theory of insider trading. This issue currently is also unsettled in the case law. Moreover, we believe that the main case on the issue, which arose in a criminal prosecution, does not fully recognize the degree to which parties to close family and personal relationships have reasonable and legitimate expectations of confidentiality in their communications, and leads to anomalous results in certain situations. Accordingly, the proposed Rule defines the scope of ''duties of trust and confidence'' for purposes of the misappropriation theory in a manner that more appropriately serves the purposes of insider trading law. Proposed Rule 10b5–2 will have no direct effect on small entities.

C. Legal Basis

We are proposing Regulation FD, Rule 181, the amendments to Forms 6–K and 8–K, Rule 10b5–1, and Rule 10b5–2 under the authority set forth in sections 10, 19(a) and 28 of the Securities Act,[131] sections 3, 9, 10, 13, 15, 23, and 36 of the Exchange Act,[132] and section 30 of the Investment Company Act.[133]

D. Small Entities Subject to the Proposed Regulation and Rules

Proposed Regulation FD would affect issuers and closed-end investment companies that are small entities.[134] As of July 31, 1999, the Commission estimated that there were approximately 830 issuers, other than investment companies, that may be considered small entities.[135] As of December 14, 1999, the Commission estimated that there are approximately 62 closed-end investment companies that may be considered small entities subject to Regulation FD.[136]

Proposed Rule 10b5–1 would apply to any small entities that engage in securities trading while aware of inside information and therefore are subject to existing insider trading prohibitions of Rule 10b–5. This could include issuers, broker-dealers,[137] investment advisers,[138] and investment companies. As of July 31, 1999, the Commission estimated that there were approximately 830 issuers, other than investment companies, that may be considered small entities. As of December 31, 1998, the Commission estimated that there were approximately 970 broker-dealers that may be considered small entities.[139] As of December 15, 1999, the Commission estimated that there were approximately 2,000 investment advisers that may be considered small entities.[140] As of December 14, 1999, the Commission estimated that there are approximately 227 investment companies that may be considered small entities. The Commission cannot estimate with certainty how many small entities engage in securities trading while aware of inside information.

E. Reporting, Recordkeeping, And Other Compliance Requirements

1. Regulation FD

When an issuer, large or small, discloses material nonpublic information, proposed Regulation FD would require it to do one of the following: (1) File a Form 8–K or, in the case of a foreign private issuer, a Form 6–K; (2) disseminate a press release containing the information through a widely circulated news or wire service; or (3) disseminate the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access (*i.e.,* a press conference to which the public is granted access such as by a teleconference or other electronic transmission).

The Regulation's ''public disclosure'' requirement would give small entity issuers flexibility in how to disseminate information (such as telephonic or Internet conference calls). This flexible performance element enables small entity issuers the freedom to select the method of public disclosure that best suits their business operations, and makes it unlikely that this ''public disclosure'' requirement would have a disproportionate affect on small entity issuers.

2. Rule 10b5–1

Proposed Rule 10b5–1 does not directly impose any recordkeeping or compliance requirements on any small entities. To the extent that an entity engaged in securities trading wished to rely on one of the defenses against liability provided in the Rule, it might be required to take certain steps. For example, to assert the affirmative defense in paragraph (c)(1)(i)(D) for trades that result from a written plan for trading securities designed to track or correspond to a market index, market segment, or group of securities, an entity, large or small, would have to maintain a written record of the trading plan. More generally, any entity, large or small, that sought to rely on the affirmative defense in paragraph (c)(2) for institutional traders would be required to comply with the specific provisions of that defense, including implementing reasonable policies and procedures to prevent insider trading. We believe that most entities to whom this defense would be relevant—*i.e.,* broker-dealers and investment advisers—already have the required procedures in place, because of existing statutory requirements.[141]

3. Rule 10b5–2

Proposed Rule 10b5–2 affects individuals and not entities. Accordingly, we believe that proposed Rule 10b5–2 would not have a significant economic impact on a substantial number of small entities.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with proposed Regulation FD, Rule 10b5–1, or Rule 10b5–2.

[131] 15 U.S.C. 77j, 77s(a), and 77z–3.

[132] 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, and 78mm.

[133] 15 U.S.C. 80a–29.

[134] Exchange Act Rule 0–10(a) defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. 17 CFR 240.0–10(a). Investment Company Act Rule 0–10(a) defines an investment company as a ''small business'' or ''small organization'' if it, ''together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.'' 17 CFR 270.0–10(a).

[135] The Commission bases its estimate on information from the Insight database from Compustat, a division of Standard and Poors.

[136] The Commission bases its estimate on information from Lipper Directors' Analytical Data, Lipper Closed-End Fund Performance Analysis Service, and reports investment companies file with the Commission on Form N–SAR.

[137] Exchange Act Rule 0–10(c) defines a broker-dealer as a small entity if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared and it is not affiliated with any person (other than a natural person) that is not a small entity. 17 CFR 240.0–10(c).

[138] Advisers Act Rule 0–7 defines an investment adviser as a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) is not in a control relationship with another investment adviser that is not a small entity. 17 CFR 275.0–7.

[139] The Commission bases its estimate on information from FOCUS Reports.

[140] The Commission bases its estimate on information from the Commission's database of registration information.

[141] *See* Section 15(f) of the Exchange Act (15 U.S.C. 78o(f)); Section 204A of the Investment Advisers Act (15 U.S.C. 80b–4a).

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with proposed Regulation FD and Rule 10b5–1 we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Regulation or Rule, or any part thereof, for small entities.

With respect to proposed Regulation FD, we believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of proposed Regulation FD, in whole or part, is not appropriate. In addition, we have concluded preliminarily that it is not feasible to further clarify, consolidate, or simplify the proposed Regulation for small entities. We have used performance elements in proposed Regulation FD in two ways. Regulation FD does not require that an issuer satisfy its obligations in accordance with any specific design, but rather allows each issuer, including small entities, flexibility to select the method of compliance that is most efficient and appropriate for its business operations. First, each issuer can select what method(s) to use to avoid selective disclosure (*e.g.,* by designating which authorized official(s) will speak with analysts). Second, each issuer can choose what method(s) to use for ''public disclosure'' (*e.g.,* filing a Form 8–K, issuing a press release, holding a conference call transmitted telephonically or over the Internet, etc.). We do not believe different performance standards for small entities would be consistent with the purpose of the proposed Regulation.

With respect to proposed Rule 10b5–1, we believe that different compliance requirements for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of proposed Rule 10b5–1, in whole or part, is not appropriate. In addition, we have concluded that it is not feasible to further clarify, consolidate, or simplify the proposed Rule for small entities. First, the aspects of proposed Rule 10b5–1 that indirectly involve compliance requirements are affirmative defenses that are not required to comply with the proposed Rule. Second, we have used performance elements for the affirmative defenses based on an index trading plan or an institutional investor implementing proper informational barriers set forth in paragraphs (c)(1)(i)(D) and (c)(2) of proposed Rule 10b5–1. If an entity decides to assert either of these affirmative defenses, proposed Rule 10b5–1 does not require that it satisfy its obligations under either of the affirmative defenses in accordance with any specific design, but rather allows it flexibility to select which measure(s) it wants to put in place to satisfy the elements of each affirmative defense. We do not believe different performance standards for small entities would be consistent with the purpose of the proposed Rule.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed Regulation and Rules; (ii) the existence or nature of the potential impact of the proposed Regulation and/or Rules on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed Regulation and Rules. Commentators are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed Regulation and/or Rules are adopted, and will be placed in the same public file as comments on the proposed Regulation and Rules themselves.

IX. Statutory Bases

We are proposing Regulation FD, Rule 181, the amendments to Forms 6–K and 8–K, Rule 10b5–1 and Rule 10b5–2 under the authority set forth in Sections 10, 19(a), and 28 of the Securities Act, Sections 3, 9, 10, 13, 15, 23, and 36 of the Exchange Act, and Section 30 of the Investment Company Act.

List of Subjects

17 CFR Part 230

Securities, Reporting and recordkeeping requirements, Investment companies.

17 CFR Part 240

Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 243 and 249

Securities, Reporting and recordkeeping requirements.

Text of Proposed Rules and Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.181 is added to read as follows:

§ 230.181 Public disclosures required under Regulation FD.

Notwithstanding Section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), any public disclosure that constitutes a prospectus need not satisfy the requirements of Section 10 (15 U.S.C. 77j) of the Act if the prospectus is used only as required under Rule 100(a) of Regulation FD (17 CFR 243.100(a)) and the registrant otherwise complies with the requirements of Regulation FD.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.10b5–1 is added after § 240l.10b–5 to read as follows:

§ 240.10b5–1 Trading ''on the basis of'' material nonpublic information in insider trading cases.

Preliminary Note to § 240.10b5–1: This provision defines when a purchase or sale constitutes trading ''on the basis of'' material nonpublic information in insider trading cases brought under Section 10(b) of the Act and Rule 10b–5 thereunder. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and

Rule 10b5–1 does not address or modify the scope of insider trading law in any other respect.

(a) *General rule.* The ''manipulative and deceptive devices'' prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b–5 thereunder are defined to include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) *Definition of ''on the basis of.''* Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is ''on the basis of'' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale.

(c) *Affirmative defenses.*

(1)(i) Subject to paragraph (c)(1)(ii) of this section, a purchase or sale is not ''on the basis of'' material nonpublic information if the person making the purchase or sale demonstrates that, before becoming aware of the information, the person:

(A) Had entered into a binding contract to purchase or sell the security in the amount, at the price, and on the date which the person purchased or sold the security;

(B) Had provided instructions to another person to execute a purchase or sale of the security for the instructing person's account, in the amount, at the price, and on the date which that purchase or sale was executed;

(C) Had adopted, and had previously adhered to, a written plan specifying purchases or sales of the security in the amounts, and at the prices, and on the dates at which the person purchased or sold the security; or

(D) Had adopted, and had previously adhered to, a written plan for trading securities that is designed to track or correspond to a market index, market segment, or group of securities, and the amounts, prices, and timing of the purchases or sales actually made were the result of following the previously adopted plan.

(ii) The defenses provided in paragraph (c)(1)(i) of this section shall be available only when the contract, plan, or instruction to purchase or sell securities was entered into in good faith, and not as part of a plan or scheme to evade the prohibitions of this section. For example, if, after becoming aware of material nonpublic information, a person alters a previous contract, plan, or instruction to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or enters into or alters a corresponding or hedging transaction or position with respect to those securities, the person shall not be able to assert the contract, plan, or instruction as a defense to liability.

(iii) For purposes of paragraph (c), the following definitions shall apply:

(A) *In the amount(s).* A contract, plan, or instruction for a purchase or sale of securities in specified ''amount(s)'' must specify either the aggregate number of shares or other securities to be purchased or sold, or the aggregate dollar amount of securities to be purchased or sold.

(B) *At the price(s).* A contract, plan, or instruction for a purchase or sale of securities at specified ''price(s)'' includes one that specifies a purchase or sale at the market price for a particular date.

(2) In the case of a person other than a natural person, a purchase or sale of securities is not ''on the basis of'' material nonpublic information if the person demonstrates that:

(i) The individual(s) making the investment decision on behalf of the person to purchase or sell the securities was not aware of the information; and

(ii) The person had implemented reasonable policies and procedures, taking into consideration the nature of the person's business, to ensure that individuals making investment decisions would not violate the laws prohibiting trading on the basis of material nonpublic information. These policies and procedures may include those that restrict any purchase, sale, and causing any purchase or sale of any security as to which the person has material nonpublic information, or those that prevent such individuals from becoming aware of such information.

5. Section 240.10b5–2 is added to read as follows:

§ 240.10b5–2 Duties of trust or confidence in misappropriation insider trading cases.

Preliminary Note to § 240.10b5–2: This section provides a non-exclusive definition of circumstances in which a person has a duty of trust or confidence for purposes of the ''misappropriation'' theory of insider trading under Section 10(b) of the Act and Rule 10b-5. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b-5, and this section is not intended to address or modify the scope of insider trading law in any other respect.

(a) *Scope of Rule.* This section shall apply to any violation of Section 10(b) of the Act (15 U.S.C. 78j(b)) and § 240.10b–5 thereunder that is based on the purchase or sale of securities on the basis of, or the communication of, material nonpublic information misappropriated in breach of a duty of trust or confidence.

(b) *Enumerated ''duties of trust or confidence.''* For purposes of this section, the circumstances under which a ''duty of trust or confidence'' exist shall include, among others, the following:

(1) Whenever a person agrees to maintain information in confidence;

(2) Whenever the person communicating the material nonpublic information and the person to whom it is communicated have a history, pattern, or practice of sharing confidences, such that the person communicating the material nonpublic information has a reasonable expectation that the other person would maintain its confidentiality; or

(3) Whenever a person receives or obtains material nonpublic information from the person's spouse, parent, child, or sibling; *provided*, however, that the person receiving or obtaining the information may demonstrate that no duty of trust or confidence existed with respect to the information, by establishing that the spouse, parent, child, or sibling that was the source of the information had no reasonable expectation that the person would keep the information confidential, because the parties had neither a history, pattern, or practice of sharing confidences, nor an agreement or understanding to maintain the confidentiality of the information.

6. Part 243 is added to read as follows:

PART 243—REGULATION FD

Sec.
243.100 General rule regarding selective disclosure.
243.101 Definitions.

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

§ 243.100 General rule regarding selective disclosure.

(a) Except as provided in paragraph (b) of this section, whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person or persons outside the issuer, the issuer shall:

(1) In the case of an intentional disclosure, make public disclosure of that information simultaneously; and

(2) In the case of non-intentional disclosure, make public disclosure of that information promptly.

(b) Paragraph (a) of this section shall not apply when a disclosure is made to a person who owes a duty of trust or confidence to the issuer (including, for example, an outside consultant such as an attorney, investment banker, or accountant) or to a person who has expressly agreed to maintain such information in confidence.

§ 243.101 Definitions.

For purposes of this Regulation FD (§ 243.101), the following definitions shall apply:

(a) *Intentional.* A selective disclosure of material nonpublic information is ''intentional'' when the individual making the disclosure either knew prior to the disclosure, or was reckless in not knowing, that he or she would be communicating information that was material and nonpublic.

(b) *Issuer.* Every issuer having securities registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or which is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), including closed-end investment companies (as defined in Section 5(a)(2) of the Investment Company Act of 1940) (15 U.S.C. 80a–5(a)(2)) but not including other investment companies, shall be subject to this Regulation.

(c) *Person acting on behalf of an issuer.* Any officer, director, employee, or agent of an issuer, who discloses material nonpublic information while acting within the scope of his or her authority, shall be considered to be a ''person acting on behalf of the issuer.'' An officer, director, employee, or agent of an issuer who discloses material nonpublic information in breach of a duty of trust or confidence to the issuer shall not be considered to be acting on behalf of the issuer.

(d) *Promptly.*

(1) ''Promptly'' shall mean disclosure as soon as reasonably practicable (but in no event more than 24 hours) after a senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser) knows, or is reckless in not knowing, of the non-intentional disclosure.

(2) For purposes of paragraph (d)(1) of this section, a ''senior official'' means any director, any executive officer (as defined in § 240.3b–7 of this chapter), any investor relations or public relations officer, or any other person with similar functions.

(e) *Public disclosure.*

(1) Except as provided in paragraph (e)(2) of this section, an issuer shall make the ''public disclosure'' of information required by § 243.100(a) of this chapter by filing with the Commission a Form 8–K (17 CFR 249.308) disclosing that information, or if the issuer is a foreign private issuer it shall file a Form 6–K (17 CFR 249.306).

(2) An issuer shall be exempt from the requirement to file a Form 8–K or Form 6–K if it instead does one of the following:

(i) Disseminates a press release containing that information through a widely circulated news or wire service; or

(ii) Disseminates the information through any other method of disclosure that is reasonably designed to provide broad public access to the information and does not exclude any members of the public from access, such as announcement at a press conference to which the public is granted access (*e.g.*, by personal attendance or by telephonic or other electronic transmission).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 249 is amended by adding the following citations:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

Section 249.308 is also issued under 15 U.S.C. 80a–29.

* * * * *

8. Form 6–K (referenced in § 249.306) is amended by revising the phrase ''and any other information which the registrant deems of material importance to securityholders'' in the second paragraph of General Instruction B to read ''information required to be publicly disclosed under Regulation FD (17 CFR 243.100) except information publicly disclosed in accordance with Rule 101(e)(2) of Regulation FD (17 CFR 243.101(e)(2)); and any other information which the registrant deems of material importance to securityholders''.

Note: Form 6–K does not and the amendments will not appear in the Code of Federal Regulations.

9. Section 249.308 is revised (Ed. Note remains unchanged) to read as follows:

§ 249.308 Form 8–K, for current reports.

This form shall be used for the current reports required by Rule 13a–11 or Rule 15d–11 (§ 240.13a–11 or § 240.15d–11 of this chapter) and for reports of material nonpublic information required to be disclosed by Regulation FD (§ 243.100 and § 243.101 of this chapter).

10. Form 8–K (referenced in § 249.308) is amended:

a. in General Instruction A, by revising the phrase ''Rule 13a–11 or Rule 15d–11'' to read ''Rule 13a–11 or Rule 15d–11, and for reports of material nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 and 243.101)''.

b. by adding a sentence to the end of paragraph 1 of General Instruction B;

c. in General Instruction B.4., by revising the phrase ''other events of material importance pursuant to Item 5,'' to read ''other events of material importance pursuant to Item 5 and of reports pursuant to Item 10,'';

d. by adding a new Item 10 under ''Information To Be Included in the Report'' to read as follows:

Note: Form 8–K does not and the amendments will not appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to Item 10 shall be filed in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)).

* * * * *

Information to be Included in the Report

* * * * *

Item 10. Regulation FD Disclosure.

Report under this item the material nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 and 243.101).

* * * * *

By the Commission.

Dated: December 20, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33492 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 890]

RIN 1512–AB86

Labeling of Flavored Wine Products (98R–317P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend the regulations to create a new standard of identity for flavored wine products. ATF believes that this regulation change is necessary to avoid consumer confusion between established classes/types of wines (including varietals, semi-generics, and type designations of varietal significance) and products that fall outside existing classes because of the addition of flavoring materials. In general, ATF proposes that such products must be labeled as ''Flavored Wine Product'' together with a truthful and adequate statement of composition.

In addition, we are proposing to amend the existing definition of ''brand label'' for wine to be consistent with the definition currently provided for distilled spirits products. This change would minimize the likelihood of consumer confusion concerning the identity of the product by making mandatory information readily visible to the consumer at retail.

Finally, this document discusses and solicits comments on a petition we received from the California Association of Winegrape Growers (CAWG) concerning the labeling of wine specialty products.

DATES: Comments must be received on or before March 29, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *Attention: Notice No. 890.* See Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8485. You may also write questions by e-mail to EAReisman@atfhq.atf.treas.gov. ATF will not accept comments on the proposal that are submitted to this e-mail address.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) provides ATF, as the delegate of the Secretary of the Treasury, with the authority to promulgate regulations with respect to the bottling, packaging, and labeling of distilled spirits, wine, and malt beverages. 27 U.S.C. 205(e). The FAA Act provides that these regulations shall prevent deception of the consumer, and provide the consumer with adequate information as to the identity and quality of alcohol beverage products.

The wine labeling regulations require that all wines sold, shipped or otherwise introduced into interstate commerce must bear labels that contain certain mandatory information. Among other things, wine labels must contain a statement relating to the class, type, or other designation of the wine. 27 CFR 4.32(a)(2). With certain exceptions, the class of the wine must be stated on the label in conformity with the standards of identity regulations. However, under certain circumstances, certain grape wine type designations may appear in lieu of a class designation, *e.g.,* grape varietal designations (*e.g.,* Chardonnay), semi-generic type designations (*e.g.,* Chablis), or type designations of varietal significance (*e.g.,* Muscatel). If the class of wine is not defined by the regulations, then a truthful and adequate statement of composition must appear on the brand label in lieu of the class designation. 27 CFR 4.34(a).

Subpart C of part 4 sets forth standards of identity for several classes and types of wine. 27 CFR 4.21. Section 4.21(a) defines ''grape wine'' as wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes. Pure condensed grape must and wine spirits may be added to grape wine. Section 4.21(a) also provides limitations on the amelioration of grape wine. Over-ameliorated grape wine may not be designated as grape wine. Rather, such wine must be designated as ''substandard wine'' or ''other than standard wine.'' 27 CFR 4.21(h).

In general, the name of a grape variety may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin (*e.g.,* ''California Chardonnay'') and if not less than 75 percent of the finished wine is derived from grapes of that variety. 27 CFR 4.23. A semi-generic name of geographic significance may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine (*e.g.,* ''California Burgundy''), and if the wine so designated conforms to the standard of identity for the product or, if there is no such standard, to the trade understanding of such class or type. A semi-generic designation is a name of geographic significance that is also the designation of a class or type of wine found to have become semi-generic by the Director of ATF. The regulations provide several examples of semi-generic designations that are also type designations for grape wines, such as Burgundy and Chablis. 27 CFR 4.24(b)(2). Semi-generic designations are also established by the Internal Revenue Code (IRC), 26 U.S.C. 5388(c). In the case of still grape wine there may also appear in lieu of the class designation, a type designation of varietal significance. This applies to American wines only. The regulations provide several examples of type designations of varietal significance, such as Muscatel and Scuppernong. 27 CFR 4.28.

Also, grape wine may be vintage dated if it is made in accordance with the standards prescribed in 27 CFR 4.27(a). Vintage wine is wine labeled with the year of harvest of the grapes, and made in accordance with classes 1, 2, or 3 of 27 CFR 4.21.

Section 4.21 does not allow for the addition of flavoring material(s) to wines with a standard of identity under subpart C of part 4. For example, a class 1, grape wine containing added flavoring material(s) is not entitled to a standard grape wine designation, appellation of origin, or vintage date since these statements only apply to a ''standard'' grape wine. Likewise, ''substandard wine'' or ''other than standard wine'' under § 4.21(h)(2) does not specifically include wine to which flavoring material(s) have been added. Substandard wine or other than standard wine typically includes any wine to which has been added sugar and water solution in an amount which is in excess of the limitations prescribed in the standards of identity for these products.

It has been ATF's longstanding policy that wines to which flavoring material(s) are added do not fall within any of the current standards of identity set forth in the wine regulations. A truthful and adequate statement of composition is required on the brand label for such flavored wine products, pursuant to § 4.34(a).

Flavored wine products may be derived from grape wine or other wines. They may be derived from citrus wine

(orange wine, grapefruit wine, *etc.*), fruit wine (apple wine, berry wine, pear wine, *etc.*) or other agricultural products (carrot wine, dandelion wine, honey wine, *etc.*).

Flavored Wine Products

Flavored wine product labels have traditionally displayed statements of composition such as ''Grape Wine With Natural Flavors'' to describe to consumers the composition of these products. Recently, some domestic wineries have begun using varietal and semi-generic names in the statement of composition on their product labels to describe the base wine portion of their flavored wine products. These flavored wine products most often have an appellation of origin such as ''California'' in conjunction with the grape varietal or semi-generic name in the statement of composition (*e.g.,* ''California Chardonnay (or Chablis) With Natural Flavors''). Flavored wine products are composed differently from existing standard of identity wines. Typically, such flavored wine products contain additional flavoring material(s). Such products may contain coloring material(s). Flavored wine products may also contain sugar and water in excess of that allowed in standard wine.

ATF is aware that the recent appearance of these grape varietal and semi-generic names on flavored wine products has caused a great deal of discussion within the wine industry. On February 26, 1998, ATF wrote to the Wine Institute to respond to their concerns about this matter. Soon after the letter was sent to the Wine Institute it was placed on the ATF internet website as public information.

Consumer Survey

In view of ATF's concerns about the labeling of flavored wine products, ATF commissioned a consumer survey in July 1998 to determine consumer interpretations of varietal and semi-generic claims on labels of flavored wine products. Among other things, the survey was designed to assess whether wine consumers distinguish between grape wine and flavored wine products based on information provided on product labels. The survey involved portraying examples of two flavored wine products: one product was portrayed as containing a grape wine base that qualified as a varietal wine and another was portrayed as a product containing a grape wine base that qualified as a semi-generic wine. Both products chosen for the survey were depicted in ''bag-in-box'' containers. Consumers were shown labels bearing only varietal or semi-generic designations and labels bearing a varietal or semi-generic type designation as part of a statement of composition including the term ''With Natural Flavors.'' Consumers were shown boxes bearing the statement of composition on the side panel only, and other boxes with the statement of composition prominently displayed on the front label. None of the labels was identical to the labels of wines currently marketed. The brand names, package designs, and label information were selected by the contractor, U.S. Research Company, in order to best measure consumer perceptions about the overall label presentations and were chosen in order to ensure that the results were not specific to any one particular product or brand of wine.

The survey revealed that even when the ''With Natural Flavors'' disclosure was prominently displayed on the front panel of the product, a large majority (80%) of the respondents failed to distinguish between grape wine and flavored wine products. The survey also revealed that placing the term ''With Natural Flavors'' on the label had no impact on consumer understanding of the amount of varietal or semi-generic wine in the product. This is important because over 55 percent of the consumers surveyed believed that all or almost the entire product was composed of the varietal or semi-generic wine. Moreover, when asked to interpret the ''With Natural Flavors'' disclosure, more than one-third of the consumers surveyed perceived it to convey a positive ''no chemicals or additives'' message. Seventeen percent indicated that they thought the ''With Natural Flavors'' disclosure meant that the product was ''natural,'' and only fourteen percent suggested that it indicated that flavors had been added to the product.

California Association of Winegrape Growers Petition

ATF received a petition, dated September 15, 1999, filed on behalf of the California Association of Winegrape Growers (CAWG), requesting an amendment of the regulations to prohibit the use of any varietal, semi-generic or geographic name as part of a statement of composition on wine specialty products. Specifically, CAWG has requested an amendment of section 4.34(a). This section states that if the class of wine is not defined in the standards of identity in subpart C of part 4, ''a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation.'' The petitioner is requesting that the regulation be amended to add the following wording:

> A statement of composition shall include the standard of identity (class and type designation) of the wine used in the product, but shall not be permitted to include, in lieu of the class designation for the wine used in the product, any varietal (grape type) designation, type designation of varietal significance, or semigeneric geographic type designation, or geographic distinctive designation, to which the wine used in the product may otherwise be entitled.

The petitioner contends that the manner in which flavored wine products are labeled, packaged, and marketed deceives consumers into thinking they are consuming varietal wine rather than flavored wine. As stated in the petition,

> Varietal-based specialty products appear on retailers' shelves next to or intermingled with traditional still wines, in packaging similar to traditional still wines [750 milliliter or 1.5 liter glass bottles sealed with a cork, or 5 liter ''bag-in-box'' containers] and with a varietal designation and an appellation of origin traditionally associated with still wines prominently displayed.

The petitioner asserts that over the last 20 years, American wine producers and grape growers have developed an important consumer market for still grape wines with varietal designations and appellations of origin. According to the petitioner, these wines represent a large volume of the domestic wine sold in the United States (64 percent for the 52 week period ending July 18, 1999). As stated in the petition, ''[v]arietal designations and appellations of origin have earned an important place in the wine consumer marketplace as indications of quality wines with certain distinctive tastes and styles.''

In support of its petition, CAWG commissioned a survey to study consumers' understanding of the current labeling of flavored wine products that include a varietal name with an appellation of origin in the statement of composition. A total of 800 telephone interviews were conducted. According to CAWG, the results of the survey showed that most respondents believe that wine labels accurately reflect what is in the container and that label information is important to their buying decisions. A little more than 48 percent of the respondents expected that products containing labels with such statements as ''California Cabernet Sauvignon with natural flavors'' and ''California Chardonnay with natural flavors'' to be standard grape wines which contain 75 percent wine made from grapes of that variety. The petitioner notes that flavored wine products which include a varietal name

in the statement of composition have no minimum varietal content requirement.

CAWG states that the results of its survey clearly show that the labeling of flavored wine products that include a variety name along with an appellation of origin in the statement of composition is misleading to consumers. The petitioner believes that its proposed amendment ''is targeted directly at the misleading nature of current statements of composition on varietal-based specialty products.'' By prohibiting varietal and semi-generic designations and appellations of origin in the statement of composition, the petitioner contends that consumers will not be misled as to the actual identity of the product. Flavored wine products that have a varietal wine base would have statements of composition in the form ''grape wine with natural flavors'' or ''white wine with natural flavors.''

ATF is not proposing the amendment requested by CAWG, however, we are soliciting comments on the petition. This will be addressed further in the section titled ''Proposed Regulation.''

Significance of Wine Labeling Terms

ATF believes that consumers have learned to attach significance to grape wines entitled to varietal/semi-generic designations, appellations of origin, and vintage dates. This belief is based on the fact that for many years the grape wine industry has heavily utilized varietal/semi-generic designations, appellations of origin, and vintage dating in the marketing of grape wines. Additionally, ATF has conducted rulemaking projects spanning nearly 14 years identifying American grape variety names. See e.g., Treasury Decision ATF–370, 61 FR 522 (January 8, 1996). Similarly, Congress has recently amended the Internal Revenue Code to recognize semi-generic names as being distinctive grape wine designations. 26 U.S.C. 5388(c), as added by Public Law 105–34, § 910(a). These efforts illustrate the importance of varietal and semi-generic grape wine designations to both the wine industry and to wine consumers. This was also addressed in the CAWG petition.

ATF believes that consumers do not understand that flavored wine products are composed differently from existing standard of identity wines. ATF further believes that consumers are confused about the distinction between an existing standard of identity wine and flavored wine products, especially when grape varietal or semi-generic terms appear on the labels of flavored wine products. Flavored wine products are often located next to varietal wines or semi-generic wines on the shelves of grocery and liquor stores. Also, the promotional and advertising materials accompanying these flavored wine products frequently feature or highlight the varietal or semi-generic component of the finished wine product, even though the finished flavored wine product is not entitled to the varietal or semi-generic designation.

Proposed Regulation

ATF has concluded that current statements of composition that include varietal or semi-generic names tend to mislead consumers to believe that flavored wine products are the same as wines that meet the percentage requirements for a varietal or semi-generic designation. ATF is basing this conclusion on its experience in regulating the labeling of wine. ATF also believes that the consumer survey it commissioned and the CAWG consumer survey support that conclusion.

Furthermore, examination of this issue has caused ATF to review its policy relating to statements of composition for all flavored wine products, including those that do not include varietal or semi-generic names, such as those that state ''Grape Wine With Natural Flavors,'' since the finished products are no longer ''Grape Wine'' but are ''Flavored Wine Products'' because of the presence of flavors.

Although we are soliciting comments on the CAWG petition, we are not proposing the amendment requested by the petitioner. We believe the regulation change proposed by CAWG is more restrictive and does not provide the industry with the flexibility in labeling their flavored wine products. On the other hand, we believe that the proposals made in this notice provide the consumer with sufficient information as to the actual identity of the product without imposing an undue burden on the industry.

Accordingly, ATF is proposing to establish a new class designation that would be called ''Flavored Wine Product.'' Under this designation, a flavored wine product would be a wine-based alcohol beverage that does not qualify for any of the class or type designations listed in the existing wine regulations because of the addition of flavoring material(s).

ATF believes that all flavored wine products need to be labeled to indicate to consumers that such products are composed differently from existing standard of identity wines. ATF, therefore, proposes to add a Class 10 to the standards of identity for wine to be called ''Flavored Wine Product.'' Such product will be required to be designated as ''Flavored Wine Product'' on labels. Furthermore, the designation must appear together with a truthful and adequate statement of composition. The designation and the statement of composition must appear in the same size, style and color typeface on the brand label.

At a minimum, the statement of composition for flavored wine products must:

1. Identify Class and/or Type

It must identify the class and/or type of each wine used in the flavored wine product (*e.g.,* ''grape wine,'' ''table wine,'' ''peach wine,'' ''honey wine''). A single grape variety, type designation of varietal significance, or semi-generic name may be used if such named grape variety, type designation of varietal significance, or semi-generic name appears together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent by volume of the finished flavored wine product. For *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the flavored wine product. An appellation of origin may not otherwise appear on the label of a product of this class. Similar provisions are being proposed for specialty products that do not contain any flavor(s) (§ 4.34(c)).

2. Identify Added Flavoring Material(s)

If one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.,* ''strawberry flavor''). If two or more flavoring materials are used in the production of the flavored wine product, each flavoring material may be specifically identified (*e.g.,* ''peach flavor,'' ''kiwi flavor,'' or ''peach and kiwi flavors'') or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as ''other flavor(s).''

With regard to the term ''natural'' as used on alcohol beverage labels to describe a flavor, *e.g.,* ''With Natural Flavors,'' ATF believes that there is no consensus among consumers as to a meaning for the term ''natural.'' This belief is based upon ATF's experience in regulating the wine industry and on its consumer survey noted above, which supports this conclusion. An example indicated in the survey reflects that fully one-third of respondents considered the term ''natural'' to indicate that no additives or chemicals are present in the product. This

conclusion is clearly erroneous. Therefore, to avoid consumer deception concerning the identity of flavored wine products, the term ''natural'' may not be used anywhere on the flavored wine product labels to describe flavoring materials. When artificial flavoring material(s) are used, they must be so described (e.g., ''artificial raspberry flavor'').

3. Identify Added Coloring Material(s)

ATF proposes to require that coloring materials(s) be disclosed in the statement of composition, whether added directly or through flavoring material(s). The coloring materials may be identified specifically (*e.g.,* ''caramel,'' ''certified color,'' ''annato,'' *etc.*) or as a general statement, such as ''artificially colored,'' to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c).

4. Include a Reference to Sugar

ATF proposes to require that sugar be listed in the statement of composition if sugar is used in the production of the flavored wine product (not including its use in the production of the base wine within the range authorized by the regulations).

5. Include a Reference to Water

ATF proposes to require that water be listed in the statement of composition, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the flavored wine product.

6. Include a Reference to Wine Spirits

ATF proposes to require, except for flavored wine products made from a base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits in the statement of composition, whether such wine spirits are added in the production of the wine component of the flavored wine product or added in the production of the flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented. Section 4.39(a)(7) prohibits the appearance on a wine label of any statement that the wine contains distilled spirits with one exception. Accordingly, we are proposing to amend the exception to cover the reference to distilled spirits in the statements of composition for flavored wine products.

Miscellaneous—Amended Definition of ''Brand Label''

ATF also proposes to revise the meaning of the term ''brand label'' in 27 CFR 4.10. Under the amended definition, a brand label is the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

ATF believes that the existing definition of the term ''brand label'' allows the mandatory information to be placed on the container in such a way that it is not readily visible to consumers. ATF also believes consumers are having difficulty locating important mandatory product label information necessary to be adequately informed as to the identity and quality of the wine products, including bag-in-boxes and other new wine containers.

The amended brand label definition proposal is based on the definition of ''brand label'' that is currently in the distilled spirits regulations and is consistent with the principal display panel approach of the Fair Packaging and Labeling Act. ATF recognizes that the proposal to amend the definition of the term ''brand label'' was raised before. On September 12, 1991, ATF published Notice No. 727, ''Definition of 'Brand Label' for Wine, and; Standard Wine Containers'' (56 FR 46393). At that time ATF proposed that the definition of ''brand label'' be amended, consistent with the definition currently proposed. This proposal was subsequently withdrawn for further study (58 FR 56801, October 25, 1993).

ATF has re-examined this issue in the context of the wine regulations for the purpose of ensuring that consumers are not misled about the identity and quality of wine products. The popularity of flavored wine products and the potential for consumer confusion between such products and other wines that fit specific class designations makes this more specific definition of ''brand label'' necessary. Under the proposed definition, the mandatory information will be readily visible to consumers at the point of purchase.

Public Participation

Who May Comment on This Notice?

We are requesting comments on these proposed regulations and the CAWG petition from all interested persons. We are also requesting comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

Will ATF Keep My Comment Confidential?

We will not recognize any material in comments as confidential. All comments and materials received may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public you should not include it in a comment. We may also disclose the name of any person who submits a comment.

Disclosure: Who May Review the Comments ATF Receives for This Notice?

Any interested person may inspect copies of this notice and all comments. You may inspect these documents during normal business hours in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- be legible;
- reference this notice number;
- be 8½″ × 11″ in size;
- contain a legible written signature; and
- be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending them to nprm.notice.890@atfhq.atf.treas.gov.

You must follow these instructions. E-mail comments must:

- contain your name, mailing address, and e-mail address;
- reference this notice number; and
- be legible when printed on not more than three pages 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at http://www.atf.treas.gov/core/regulations/rules.htm

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 90-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

We have determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Does the Paperwork Reduction Act Apply to this Proposed Rule?

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507, and its implementing regulations (5 CFR part 1320) apply to this proposed rule. The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) for review in accordance with section 3507(d) of the PRA. The estimated average burden associated with the collection of information is 0 hours per respondent or recordkeeper because the requirement is usual and customary for wine producers. The number of respondents/recordkeepers is 6,060. Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified.

Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of ATF, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in 27 CFR 4.21(j) and 4.34. This information is required to properly identify flavored wine products. The collection of information is mandatory. The likely respondents are businesses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Does the Regulatory Flexibility Act Apply to This Proposed Rule?

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule required to be issued for notice and comment 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 government jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. Since producers routinely make changes to their labels, we do not believe that the proposed amendments, if adopted, would result in any additional burdens on the industry. Accordingly, a regulatory flexibility analysis is not required.

Drafting information. This document was drafted by Edward A. Reisman, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF also participated in the development of this document.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.10 is amended by revising the definition of the term ''brand label'' to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Brand label. The principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

* * * * *

Par. 3. Section 4.21 is amended by adding new paragraph (j) to read as follows:

§ 4.21 The standards of identity.

* * * * *

(j) *Class 10; flavored wine product.* A flavored wine product is a wine-based alcohol beverage that does not qualify for any of the other class or type designations listed in this section because of the addition of flavoring material(s).

(1) *Mandatory class and type designation.* The designation of such product is ''flavored wine product,'' together with a truthful and adequate statement of composition, all of which must appear in the same size, style and color typeface. At a minimum, the statement of composition must:

(i) Identify the class and/or type of each wine used in the flavored wine product (*e.g.,* ''grape wine,'' ''table wine,'' ''peach wine,'' ''honey wine''). A single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively, may be used if such named grape variety, type designation of varietal significance, or semi-generic name appears together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent by volume of the finished flavored wine product: *Provided,* That for *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the finished

flavored wine product. An appellation of origin may not otherwise appear on the label of a product of this class.

(ii) Identify added flavoring material(s). If one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.,* ''peach flavor'' or ''kiwi flavor''). If two or more flavoring materials are used in the production of the flavored wine product, each flavoring material may be specifically identified (*e.g.,* ''peach flavor,'' ''kiwi flavor,'' or ''peach and kiwi flavors'') or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as ''other flavor(s).'' The term ''natural'' may not be used to describe flavoring materials anywhere on the product label(s). Artificial flavoring material(s) must be so described (*e.g.,* ''artificial raspberry flavor'');

(iii) Identify coloring material(s), whether added directly or through flavoring material(s). The coloring materials may be identified specifically (*e.g.,* ''caramel,'' ''certified color,'' ''annato,'' etc.) or the words ''artificially colored'' may be used to indicate the presence of any one or a combination of coloring material(s), except that FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c);

(iv) Include a reference to sugar, if the sugar is used in the production of the flavored wine product (not including the use of sugar in the production of the base wine within the authorized limits);

(v) Include a reference to water, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the flavored wine product;

(vi) Include, except for flavored wine products made from a base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits, whether added in the production of the wine component of the flavored wine product or added in the production of the flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented.

(2) *Optional statements.* In addition to the statement of composition portion of the mandatory designation, additional statements regarding the components of the flavored wine product may appear on a back or side label, but not the brand label. Such statements must reference all components listed in the mandatory statement of composition and must include the percentage of each component totaling 100 percent. Furthermore, such additional statements must be truthful, accurate and specific, within the meaning of § 4.38(f).

Par. 4. Section 4.34 is amended by removing the last two sentences in paragraph (a) and adding in their place three new sentences and by adding a new paragraph (c) to read as follows:

§ 4.34 Class and type.

(a) * * * Except as provided in paragraph (c) of this section, an appellation of origin may not appear on the label of the product. If the statement of composition includes a single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively, the product must comply with the provisions of paragraph (c) of this section. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. All parts of the designation of the wine, whether mandatory or optional, must appear together in the same size, style and color typeface.

* * * * *

(c) If the class of wine is not defined in subpart C, and the statement of composition required by paragraph (a) of this section includes a single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively,

(1) An appellation of origin no smaller than a country must appear together with the named grape variety, type designation of varietal significance, or semi-generic name; and

(2) The named grape variety, type designation of varietal significance, or semi-generic type wine must constitute not less than 75 percent by volume of the finished wine product: *Provided,* That for *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the finished wine product.

Par. 5. Section 4.39(a) is amended by revising the introductory text in paragraph (7) to read as follows:

§ 4.39 Prohibited practices.

(a) * * *

(7) Any statement, design, device, or representation (other than the statement of composition required by § 4.21(j)(1) and a statement of alcohol content in conformity with § 4.36), which tends to create the impression that a wine:

* * * * *

Signed: October 13, 1999.

John W. Magaw,

Director.

Approved: November 12, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–33574 Filed 12–27–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219–AA92

Requirements for the Approval of Flame-Resistant Conveyor Belts

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

ACTION: Proposed rule; limited reopening of the record; request for public comments.

SUMMARY: We (MSHA) are reopening the rulemaking record on our proposed rule revising the requirements for approval of flame-resistant conveyor belts for the limited purpose of giving you (interested parties) an opportunity to comment on two documents. These documents are an updated Preliminary Regulatory Impact Analysis (PRIA) and an updated Paperwork Reduction Act (PRA) submission filed with OMB. The updated PRIA, using recent economic and industry data, evaluates the impact of the proposed part 14 approval requirements on small manufacturers and the impact of proposed part 75 modifications on small mines. The updated PRIA concludes that the proposal would not have a significant economic impact on a substantial number of small entities. The updated paperwork submission evaluates the information collection requirements of the proposal using OMB's 1995 revised 83–I. Only comments addressing the updated PRIA, including its conclusion that the proposal would not have a significant economic impact on a substantial number of small entities, and the information collection requirements of the updated paperwork submission will be considered by MSHA. You may obtain a copy of the updated PRIA and updated paperwork submission, using revised form 83–I and Supporting Statement, from MSHA's Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; telephone (703) 235–1910. You may also access our Internet website at http://

www.msha.gov to obtain an electronic copy.

DATES: Please submit your comments on or before February 28, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to MSHA. Clearly identify your comments and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984; or

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

We would appreciate receiving an original hard copy of your comments for accuracy.

In addition, send your comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for MSHA, 715 17th Street NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, (703) 235–1910. Copies of this reopening notice, updated PRIA and updated paperwork submission in alternate formats may be obtained by calling (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the initiation of this rulemaking, we held a public meeting on January 19, 1989, in Triadelphia, West Virginia, to discuss the development of the revised laboratory-scale flame test to evaluate the resistance of conveyor belts to ignition and flame propagation [54 FR 1802]. On December 24, 1992, we published a proposed rule to implement new procedures and requirements for testing and approval of flame-resistant conveyor belts and requirements for their use in underground coal mines [57 FR 61524], requesting public comment by February 22, 1993. The date for comments was extended to March 26, 1993, in response to public request. Several commenters requested a hearing on this proposal. On May 2, 1995, we held a public hearing in Washington, Pennsylvania [69 FR 16589]. The post-hearing comment period closed on June 5, 1995.

On June 1, 1995, the United Mine Workers of America (UMWA) and the Bituminous Coal Operators' Association (BCOA) jointly submitted ten (10) questions regarding the proposed rule and issues raised at the public hearing. On October 31, 1995, we placed a written response to each question in the rulemaking record. On the same date we reopened the record for 45 days to give all interested parties an opportunity to provide any additional data, test results, and technical information [60 FR 55353]. On December 20, 1995, we extended the comment period to February 5, 1996 [60 FR 65609], the date on which the record closed.

II. Specific Issues

A. The Regulatory Flexibility Act (RFA)

The RFA requires us to analyze and publish, for public comment, the impact of a proposed regulation on small entities. This analysis must consider regulatory alternatives consistent with the purpose of applicable statutes, and explain our rationale for the regulatory option proposed. If there is no significant economic impact on a substantial number of small entities, we can so certify, providing a factual basis for the certification. In Chapter V of the PRIA for the conveyor belt proposal (available simultaneously with the proposed rule on December 24, 1992), we preliminarily assessed the impact of the proposal and determined that the proposed rule would not have a significant economic impact on a substantial number of small mining operations. The preamble to the proposal also included a discussion of our preliminary conclusions about the cost of the rule and invited all conveyor belt manufacturers and mine operators, including small manufacturers and small operators, to comment.

At the time the conveyor belt proposal was published, we defined a small mine to be one that employed fewer than 20 miners. In order to fully comply with the RFA requirements, we must use the Small Business Administration (SBA) definition for ''small mine'' and ''small conveyor belt manufacturer.'' For the mining industry, SBA defines a ''small'' mine as one with 500 or fewer employees. SBA's definition of a small conveyor belt manufacturer is also one with 500 or fewer employees. To ensure that the PRIA for the conveyor belt proposal conforms with the appropriate criteria, we have updated our evaluation of the impact of the proposal on small mines and small manufacturers in the PRIA using the SBA definitions. The updated PRIA also reflects current economic and industry data and addresses comments received on the PRIA from commenters on the 1992 proposal.

This notice advises the mining industry that we are reopening the record for the limited purpose of receiving comments from you on the updated PRIA and its assessment that the conveyor belt proposal would not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers, as defined by the SBA. Comments which are outside the scope of this notice will not be considered.

B. The Paperwork Reduction Act (PRA) of 1995

The proposed rule for conveyor belts, published on December 24, 1992, summarized the paperwork burdens of the proposal based on the paperwork evaluation set out in the SF 83 and Supporting Statement, consistent with the PRA of 1980. It also requested comments on the collection of information requirements contained in the proposal from interested parties, asking that such comments be sent to us and to the MSHA Desk Officer at the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). Prior to publication of the proposal, by transmittal letter dated June 24, 1992, the Secretary sent to OMB a copy of the proposed rule, the PRIA, and the paperwork submission using form SF 83 required under Executive Order 12291 and the PRA. These documents are part of the rulemaking record of this proposal. However, we have confirmed that OIRA has no files on our conveyor belt proposal nor a record indicating that the proposed rule, PRIA, and paperwork submission were received by that office.

This notice advises you that we are resubmitting a proposed paperwork submission on the requirements for approval of flame-resistant conveyor belt to OMB for its review and approval under 44 U.S.C. § 3507(d) of the PRA. This resubmittal provides you with the opportunity to comment. We updated the paperwork submission to address changes contained in the PRA of 1995, to reflect current industry and economic data, and to address comments received on the information collection requirements from commenters on the 1992 proposal. It uses the 1995 OMB revised form 83–I, instead of the SF 83 prepared and transmitted to OMB with the conveyor belt proposal in 1992.

Descriptions of the respondents and information collection requirements follow with an estimate of the annual information collection burden and cost of that burden. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information.

1. Description of the Proposed Collection of Information Requirements, the Need for and Proposed use of the Information

Under the Federal Mine Safety and Health Act of 1977 (Mine Act), we are required to approve certain products and equipment for use in underground coal mines. This approval indicates that MSHA's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, are met. Section 311(h) of the Mine Act requires that all conveyor belts acquired for use underground meet the requirements established by the Secretary for flame-resistant conveyor belts. Because of the fire hazards in underground coal mines, our current safety standard, 30 CFR 75.1108, requires the use of flame-resistant conveyor belts.

If you are a manufacturer who desires to market your belts as approved for use in underground coal mines, you must submit an application for conveyor belt approval to us. The paperwork provisions found in proposed § 14.4(c) and (d), application for approval and extension of approval, would require an application for approval of flame-resistant belt to contain product specifications, including compound formulation, describing the belt or proposed changes to approved belting. This information would be used by our technical experts to assess the belt's compliance with the proposed technical requirements and to determine whether the belt should be approved for use in underground coal mines. Further, under proposed § 14.5, the applicant would need to submit three 5-foot by 9-inch samples of the belt to MSHA for testing where testing of the belt is required. Our approval marking on a product indicates that the product meets the specified technical requirements. The information this proposed rule would require is essentially the same information currently required by manufacturers seeking ''acceptance'' of conveyor belts under part 18.

Any product not in compliance with these proposed requirements would need to be traced and replaced or withdrawn from use if it could present a hazard to miners. Proposed § 14.7(d) would require you, as an approval-holder, to maintain records on the distribution of all conveyor belts bearing an approval marking. The proposal does not specify a set number of years for retention of records on the distribution of approved belts, or the type of record you must maintain. Instead, the proposed rule would require retention of records for at least the projected service life of the belt, as determined by you, the applicant. This approach would recognize that the life of a belt can vary depending on factors such as its physical characteristics, use as a main line or section belt, the type of material being transported, and belt maintenance. We assume that most manufacturers would use existing record systems to fulfill this proposed requirement.

Proposed § 14.8(d) would require you, as an approval-holder, to notify us immediately should you become aware that approved belts may have been distributed that do not meet the requirements for flame resistance upon which the approval is based. Prompt notification is important so that we could work with you on appropriate corrective action to protect miners from the hazards of fire which noncompliant conveyor belting could affect.

2. Description of Respondents

The respondents in the paperwork provisions are mine equipment manufacturers who produce conveyor belts for underground mines. Although there are 74 firms or subsidiaries of firms that hold MSHA acceptances for conveyor belts under the existing rule in part 18, the number of active belt manufacturers has decreased since the time the proposed rule was published in 1992. Some companies are no longer in business and some have been consolidated with other companies. Therefore, MSHA estimates that only ten manufacturers of conveyor belts would submit applications for approval of flame-resistant conveyor belt under the proposed rule. These manufacturers produce a number of different conveyor belts which are normally approved through separate applications for approval. An application for approval would be required whenever a new approval is sought under the proposed part 14 requirements, or when changes to a previously approved belt are planned.

3. Information Collection Burden

We estimate that there would be 663 burden hours for the first year related to conveyor belt manufacturers, 383 hours for the second year and 143 burden hours for each year thereafter, for a total of years one through three of 1,189 burden hours. The costs associated with that burden would be $46,734 for the first year, $27,269 for the second year and $10,199 for each succeeding year for a total of $84,202. With respect to this collection of information, we request your comments specifically on the resubmitted paperwork submission. You are invited to comment further on:

(1) 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) The accuracy of our estimate of the projected burden, including the validity of methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology

III. Request for Comments

This is a limited reopening of the record to provide you an opportunity to comment on the updated PRIA and the updated paperwork submission we are resubmitting to OMB on the proposed requirements for the approval of flame-resistant conveyor belts. We will consider comments addressing the economic impact of the proposal on small manufacturers and small mines and our conclusion, in the updated PRIA, that the proposal would not have a significant economic impact on a substantial number of small entities. Comments on the information collection requirements in the updated paperwork submission will also be considered. Comments addressing the substantive provisions of proposed part 14 and § 75.1108–1 will not be considered due to the limited scope of this reopening notice.

We encourage you to take advantage of this opportunity to provide information and express your concerns on the specific issues discussed here.

You can obtain a copy of the updated PRIA and updated paperwork submission by contacting MSHA at the address or telephone number provided at the beginning of this notice. These documents are also available on our website at http://www.msha.gov.

Dated: December 13, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–33531 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AA75

Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines

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

ACTION: Proposed rule; limited reopening of the record; request for public comments.

SUMMARY: This notice announces that we (MSHA) have updated our Preliminary Regulatory Impact and Flexibility Analysis (PRIA) for our proposed rule on high-voltage longwall equipment and that we are reopening the rulemaking record for the limited purpose of providing interested parties an opportunity to comment on the updated PRIA. The updated PRIA includes an evaluation of the impact of the part 18 approval requirements on small manufacturers and the impact of the proposed part 75 requirements on small mines. The updated PRIA concludes that the proposal would not have a significant economic impact on a substantial number of these small entities. Only comments addressing the updated PRIA, including the economic impact of the proposal on small manufacturers and small mine operators described in the PRIA, will be considered by MSHA. You may obtain a copy of the updated PRIA from MSHA's Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; telephone (703) 235–1910. You may also access our Internet website at http://www.msha.gov to obtain an electronic copy.

DATES: Please submit your comments on or before February 28, 2000.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to MSHA. Clearly identify your comments as such and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984; or

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov.

We would appreciate receiving an original hard copy of your comments for accuracy.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910. Copies of this reopening notice and updated PRIA in alternate formats may be obtained by calling (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 1989, (54 FR 50062), we issued a proposed rule revising our electrical safety standards for underground coal mines. That proposal addressed all of our electrical standards for underground coal mines and would have allowed the use of high-voltage longwall equipment; however, it did not specifically focus on the safety issues related to the use of high-voltage longwall equipment. We published a new proposed rule on August 27, 1992, (57 FR 39036) related specifically to the use of high-voltage longwall equipment in underground coal mines. This proposal also addressed approval requirements for high-voltage electrical equipment operated in longwall face areas of underground coal mines. The comment period on the proposal was scheduled to close on October 23, 1992, but was extended to November 13, 1992 (57 FR 48350). Because considerable time had passed since the record had closed, we reopened the rulemaking record on October 18, 1995 (60 FR 53891), to provide all interested parties an opportunity to submit additional comments on the proposed rule. The comment period was scheduled to close on November 14, 1995, but was extended to December 18, 1995 (60 FR 57203), the date on which the record closed. We received no requests for a public hearing on the proposal.

The high-voltage longwall proposal would revise our existing standards to allow the use of high voltage longwall mining systems. Longwall mining is a mining method which has undergone advances in technology during the past 25 years. These technological advances have led to improved, safer systems. The proposal would be implemented in conjunction with revisions to 30 CFR part 18 which would make conforming changes to approval and design requirements for high-voltage equipment. The additional requirements under part 18 are also consistent with advances in mine technology in that they would require high-voltage switchgear used on face equipment to have enhanced safety protection from fire, explosion, and shock hazards.

II. Specific Issue: Regulatory Flexibility Act (RFA)

The RFA requires an agency to analyze a proposed rule's impact on small entities, publish the analysis for public comment, discuss regulatory alternatives considered that are consistent with the purpose of applicable statutes, and explain the rationale for the regulatory option proposed. If there is no significant economic impact on a substantial number of small entities, an agency can so certify, providing a factual basis for the certification. In Chapter V of the PRIA on the high-voltage longwall proposal (available simultaneously with the proposed rule on August 27, 1992), we preliminarily assessed the impact of the proposal and determined that the proposed rule would not have a significant economic impact on a substantial number of small mining operations. The preamble to the proposal also included a discussion of our preliminary conclusions about the impact and cost of the rule. The 1992 PRIA invited the public to comment on these small entity and cost conclusions.

At the time the high voltage proposal was published, we used our traditional definition of a small mine as one that employed fewer than 20 miners. In order to comply fully with the RFA requirements, we must use the Small Business Administration (SBA) definition of a small entity. For the mining industry, SBA defines a ''small'' mine as one with 500 or fewer employees. To ensure that the high-voltage longwall proposed rule conforms with the RFA, MSHA has analyzed the impact of the proposed rule on mines with 500 or fewer employees (as well as on those with fewer than 20 employees). MSHA determined that the proposed rule would not have a significant economic impact on a substantial number of small mines, whether a small mine is defined as one with 500 or fewer miners or one with fewer than 20 miners. The Agency has further determined that the proposed rule would not have a significant economic impact on a substantial number of small entities engaged in the manufacture of high-voltage longwall equipment. The SBA has defined these small entities as those manufacturers with 750 or fewer employees. To ensure that the PRIA for the high voltage proposal conforms with the appropriate criteria, we have updated our evaluation of the proposal's impact on small mines and small manufacturers in the updated PRIA using the SBA definitions. The updated PRIA also reflects current economic and

industry data and addresses comments received on the PRIA from commenters on the 1992 proposal.

III. Request for Comments

This is a limited reopening of the record to provide you an opportunity to comment on our updated PRIA and its assessment that the high voltage longwall proposal would not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers of high voltage equipment, as defined by the SBA. We will consider comments addressing the economic impact of the proposal on small manufacturers and small mines and our conclusion, in the updated PRIA, that the proposal would not have a significant economic impact on a substantial number of small entities. Comments addressing the substantive provisions of proposed parts 18 and 75 will not be considered due to the limited scope of this reopening notice.

We encourage you to take advantage of this opportunity to provide information and express your concerns on the specific issues discussed here.

Again, you can obtain a copy of this reopening notice and the updated PRIA by contacting MSHA at the address or telephone number provided at the beginning of this notice. These documents are also available on our website at http://www.msha.gov.

Dated: December 13, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–33532 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 811

RIN 0701–AA–62

Release, Dissemination, and Sale of Visual Information Materials

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising our rules on the Release, Dissemination, and Sale of Visual Information Materials to reflect current policies. Part 811 implements Air Force Instruction (AFI) 33–117, Visual Information Management, and applies to all Air Force activities.

DATES: Submit comments on or before February 28, 2000.

ADDRESSES: Mr. Raymond Dabney, HQ AFCIC/ITSM, 1250 Air Force Pentagon, Washington, DC 20330–1250, 703–588–6136.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Dabney, HQ AFCIC/ITSM, 703–588–6136.

SUPPLEMENTARY INFORMATION: The Department of the Air Force is revising our rules on the Release, Dissemination, and Sale of Visual Information Materials of the Code of Federal Regulations (CFRs) to reflect current policies. This part implements Air Force Instruction (AFI) 33–117, Visual Information Management, and applies to all Air Force activities.

List of Subjects in 32 CFR Part 811

Archives and records, Motion pictures.

For the reasons stated in the preamble, the Department of the Air Force is proposing to revise 32 CFR part 811 as follows:

PART 811—RELEASE, DISSEMINATION, AND SALE OF VISUAL INFORMATION MATERIALS

Sec.
811.1 Exceptions.
811.2 Release of visual information materials.
811.3 Official requests for visual information productions or materials.
811.4 Selling visual information materials.
811.5 Customers exempt from fees.
811.6 Visual information product/material loans.
811.7 Collecting and controlling fees.
811.8 Forms prescribed.

Authority: 10 U.S.C. 8013.

§ 811.1 Exceptions.

The following does not apply to:

(a) Visual information (VI) materials made for the Air Force Office of Special Investigations for use in an investigation or a counterintelligence report. (See Air Force Instruction (AFI) 90–301, The Inspector General Complaints, describes who may use these materials.)

(b) VI materials made during Air Force investigations of aircraft or missile mishaps according to AFI 91–204, Safety Investigations and Reports. (See AFI 90–301.)

§ 811.2 Release of visual information materials.

(a) Only the Secretary of the Air Force for Public Affairs (SAF/PA) clears and releases Air Force materials for use outside Department of Defense (DoD), according to AFI 35–205, Air Force Security and Policy Review Program.

(b) The Secretary of the Air Force for Legislative Liaison (SAF/LL) arranges the release of VI material through SAF/PA when a member of Congress asks for them for official use.

(c) The International Affairs Division (HQ USAF/CVAII) or, in some cases, the major command (MAJCOM) Foreign Disclosure Office, must authorize release of classified and unclassified materials to foreign governments and international organizations or their representatives.

§ 811.3 Official requests for visual information productions or materials.

(a) Send official Air Force requests for productions or materials from the DoD Central Records Centers by letter or message. Include:

(1) Descriptions of the images needed, including media format, dates, etc.

(2) Visual information record identification number (VIRIN), production, or Research, development, test, and evaluation (RDT&E) identification numbers, if known.

(3) Intended use and purpose of the material.

(4) The date needed and a statement of why products are needed on a specific date.

(b) Send inquiries about motion picture or television materials to the Defense Visual Information Center (DVIC), 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

(c) Send Air Force customer inquiries about still photographic materials to 11 CS/SCUA, Bolling AFB, Washington, DC 20332–0403 (the Air Force accessioning point).

(d) Send non-Air Force customers' inquiries about still photographic materials to the DVIC.

§ 811.4 Selling visual information materials.

(a) Air Force VI activities cannot sell materials.

(b) HQ AFCIC/ITSM may approve the loan of copies of original materials for federal government use.

(c) Send requests to buy:

(1) Completed, cleared, productions, to the National Archives and Records Administration, National Audiovisual Center, Information Office, 8700 Edgeworth Drive, Capitol Heights, MD 20722–3701.

(2) Nonproduction VI motion media to the DVIC. The center may sell other Air Force VI motion picture and television materials, such as historical and stock footage. When it sells VI motion media, the DVIC assesses charges, unless § 811.5 exempts the requesting activity.

(3) VI still media to the DoD Still Media Records Center (SMRC), Attn: SSRC, Washington, DC 20374–1681. When SMRC sells VI still media, the

SMRC assesses charges, unless § 811.5 exempts the requesting activity.

§ 811.5 Customers exempt from fees.

(a) Title III of the 1968 Intergovernmental Cooperation Act exempts some customers from paying for products and loans. This applies if the supplier has sufficient funds and if the exemption does not impair its mission. The requesting agency must certify that the materials are not commercially available. When requests for VI material do not meet exemption criteria, the requesting agency pays the fees. Exempted customers include:

(1) DoD and other government agencies asking for materials for official activities (see DoD Instruction 4000.19, Interservice, and Intergovernmental Support, August 9, 1995, and DoD Directive 5040.2, Visual Information (VI), December 7, 1987.

(2) Members of Congress asking for VI materials for official activities.

(3) VI records center materials or services furnished according to law or Executive Order.

(4) Federal, state, territorial, county, municipal governments, or their agencies, for activities contributing to an Air Force or DoD objective.

(5) Nonprofit organizations for public health, education, or welfare purposes.

(6) Armed Forces members with a casualty status, their next of kin, or authorized representative, if VI material requested relates to the member and does not compromise classified information or an accident investigation board's work.

(7) The general public, to help the Armed Forces recruiting program or enhance public understanding of the Armed Forces, when SAF/PA determines that VI materials or services promote the Air Force's best interest.

(8) Incidental or occasional requests for VI records center materials or services, including requests from residents of foreign countries, when fees would be inappropriate. AFI 16–101, International Affairs and Security Assistance Management, tells how a foreign government may obtain Air Force VI materials.

(9) Legitimate news organizations working on news productions, documentaries, or print products that inform the public on Air Force activities.

(b) [Reserved]

§ 811.6 Visual information product/ material loans.

(a) You may request unclassified and classified copies of current Air Force productions and loans of DoD and other Federal productions from JVISDA, ATTN: ASQV–JVIA–T–AS, Bldg. 3, Bay 3, 11 Hap Arnold Blvd., Tobyhanna, PA 18466–5102.

(1) For unclassified products, use your organization's letterhead, identify subject title, PIN, format, and quantity.

(2) For classified products, use your organization's letterhead, identify subject title, personal identification number (PIN), format, and quantity. Also, indicate that either your organization commander or security officer, and MAJCOM VI manager approve the need.

(b) You may request other VI materials, such as, still images and motion media stock footage, from DVIC/ OM–PA, 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

§ 811.7 Collecting and controlling fees.

(a) The DoD records centers usually collect fees in advance. Exceptions are sales where you cannot determine actual cost until work is completed (for example, television and motion picture services with per minute or per footage charges).

(b) Customers pay fees, per AFR 177–108, Paying and Collecting Transactions at Base Level, with cash, treasury check, certified check, cashier's check, bank draft, or postal money order.

§ 811.8. Forms prescribed.

Air Force (AF) Form 833, Visual Information Request, AF Form 1340, *Visual Information Support Center Workload Report,* Department of Defense (DD) Form 1995, Visual Information (VI) Production Request and Report, DD Form 2054–1, Visual Information (VI) Annual Report, and DD Form 2537, Visual Information Caption Sheet are prescribed by this publication.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–33604 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM98–3; Order No. 1274]

Revisions to Rules of Practice; Further Proposed Changes

AGENCY: Postal Rate Commission.

ACTION: Supplementary notice of further proposed rule.

SUMMARY: This document addresses comments on a previous proposal to revise the general rules of practice. It proposes adopting the special rules of practice on a permanent basis and makes several other improvements. The Commission invites comments on this set of proposals.

DATES: Submit comments no later than January 21, 2000.

ADDRESSES: Send correspondence concerning this proposal to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

In order no. 1218 the Commission solicited suggestions from interested parties on ways to improve the efficiency and effectiveness of proceedings conducted pursuant to 39 U.S.C. 3624. See 63 FR 46732 (September 2, 1998). The order encouraged comments on any topic covered in 39 CFR 3001.1–92, with the exception of library references and confidential information, which were to be addressed in separate rulemakings. While all the rules of practice and procedure were open for comment, several areas of particular interest were identified, based on the Commission's assessment of the rules in operation during the most recent omnibus rate case, docket no. R97–1.

Specifically, the Commission found that incorporation of all (or most) of the special rules into the rules of practice and procedure merited serious consideration. Traditionally, special rules of practice have been issued for application during omnibus rate cases, but more recently similar rules have been utilized in classification and complaint dockets as well. The Commission further indicated that an assessment of ways to reduce costs inherent in the service of documents be undertaken. Thus, consideration of the extent to which electronic filing requirements or options can be added is warranted. Finally, the Commission noted that the use of surveys and the Postal Service's filing of pro forma financial data, two recently adopted revisions, worked reasonably well during the last omnibus rate case.

Five sets of comments suggesting improvements were received. The comments are available for public inspection in the Commission's docket section, and can be accessed electronically at www.prc.gov. Generally, the comments do not oppose the integration of the special rules of practice into the current rules of practice and procedure, suggest a mixed

response to the possibility of electronic filing requirements, and raise the issue of whether certain technical and procedural rules have outlived their usefulness. To this end, some commenters, particularly the Postal Service, offer detailed suggestions regarding streamlining the Commission rules.

Introduction

This proposed rulemaking focuses on the aforementioned areas of interest, while also addressing minor updates to reflect internal Commission changes since the rules were first promulgated. As noted earlier, recent dockets (docket Nos. RM99–2 and RM98–2) modify Commission rules concerning confidential information (rules 42 and 42a) and library references (rule 31(b)), respectively. See order No. 1267 (issued October 8, 1999) and order No. 1273 (issued November 24, 1999). Accordingly, those rulemakings take precedence over revisions otherwise merited by integration of the special rules. The changes now proposed, in sum, have been tested in numerous Commission proceedings and have proven to be effective and efficient.

The Commission has narrowed the scope of order No. 1218 by limiting its consideration in this proposed rulemaking to Subpart A-Rules of General Applicability (rules 1–43). Commission rules of practice and procedure found in Subparts B through F (rules 51–92), which include regulations pertaining to the initiation of dockets, such as requests for changes in rates, fees or the mail classification schedule, will be addressed in a later rulemaking. Consideration of revisions to rules 51–92 therefore is deferred until that time.

Note: As such, commenters' remarks on the following issues will be deferred: (1) The elimination of the required production of ''functionalized accrued costs,'' (rule 54); (2) the elimination of documentation requirements leading to the production of ''unnecessary, little-used library references,'' (rule 54(h)(5)); (3) the elimination of anachronistic technical references and requirements (as in rule 54(h)(5)(v)(b)); (4) the adjustment of rules pertaining to limited, expedited proceedings (rules 54 and 64) to minimize the need for the filing of routine waiver requests; (5) the amendment of pre-filing requirements in omnibus rate cases to allow for earlier and improved access to information; and (6) the amendment of rules 52 and 54 regarding Commission acceptance of Postal Service formal requests for changes in rates or fees.

In the interest of simplicity, this order first addresses integration of the special rules, with discussion of electronic filing and minor updates presented thereafter. In the last section of the rulemaking, the Commission evaluates miscellaneous commenter suggestions.

Special Rules

The special rules, originally designed for use in omnibus rate proceedings (such as docket no. R97–1), recently have been employed in several classification and complaint dockets. As the special rules are now more universally applied in Commission proceedings, the Commission proposes that these rules be incorporated in its rules of practice and procedure.

The special rules of practice encompass five discrete areas: evidence, discovery, service, cross-examination and ''general,'' which in part addresses the use of library references (the subject of a separate rulemaking). The rules generally provide both detailed procedures designed for complex omnibus rate cases with numerous participants, and pleading deadlines, which are more accelerated than those in the existing rules of practice. The Commission believes that incorporation of the shortened time periods into the current rules of practice and procedure is a reasonable action, given that parties repeatedly have demonstrated an ability to meet the deadlines set in omnibus rate cases, the Commission's largest and most complex proceedings. The text of the proposed revisions is presented in the attachment to this notice and order, and the Commission now describes the changes it proposes.

Evidence

The special rules related to evidence address the evidentiary case of participants, exhibits, motions to strike, and designation of evidence from other Commission dockets. The Commission proposes to incorporate these rules primarily in current rules 21 (motions), 30 (hearings) and 31 (evidence). To the extent that the special rules apply to library references, order No. 1273 takes precedence.

Discovery

The special rules related to discovery provide for more abbreviated pleading periods than the existing rules. Thus, the response time for interrogatories has been shortened from 20 days to 14 days, answers to other discovery requests likewise are due in 14 days (rather than 20 days), and compelled responses to discovery requests are due within 7 (rather than 10) days of the date of the order compelling an answer. Further, the rules of practice will now contain provisions for follow-up interrogatories and motions to compel discovery. Finally, the Commission proposes changing the time period for service of objections to discovery requests from 10 to 7 days, which, while not currently a special rule, appropriately reflects the shortened time frame for discovery.

The Commission has revised and renumbered the current rules pertaining to discovery (rules 25 through 28) to include introduction of the Commission's general policy on discovery in rule 25. This rule includes the provisions of special rule 2–E, which addresses discovery to obtain information available only from the Postal Service. Special rule 2–E states that while discovery against a participant is generally scheduled to end prior to the receipt into evidence of that participant's direct case, an exception is made when participants require information available only from the Postal Service. In this instance, discovery requests are allowed up to 20 days prior to the filing date for final rebuttal testimony. One commenter suggests that the Commission clarify this rule to reflect more recent rulings allegedly limiting its scope. The Commission finds such a revision unnecessary at this time, and will continue to apply the special rule as essentially written (and now incorporated in rule 25) on a case-by-case basis.

Service. The special rules regulating service, as distinct from the issue of electronic filing, raised only one concern from commenters. One commenter notes that special rule 3–C, which provides exceptions to general service requirements for certain documents, was established as a convenience in response to large service lists in omnibus rate cases. This commenter suggests that the rule therefore be reserved as a special rule and employed only in proceedings with a significant number of participants. The Commission does not view this rule as requiring such special treatment, and therefore proposes to incorporate it in the standard rules largely as written. The Commission proposes to add this and other special rules on service to current rules 10 (form and number of copies of documents) and 12 (service of documents), with slight modification made to the text to accommodate current Commission computer technology.

Cross-examination

The Commission proposes that special rules 4–A and 4–B, respectively governing written and oral cross-examination, be added to rule 30(e), presentation by parties.

General

The remaining general special rules address the rules on argument by parties in a proceeding, new affirmative matter, legal memoranda and library references, as well as the scope of cross-examination. As discussed earlier, library references are the subject of a separate rulemaking. The Commission proposes that the other general special rules be incorporated in rule 30(e) of the present Commission rules of practice and procedure.

Electronic Filing

The Commission is very cognizant of current communications and information technology and has made several efforts to incorporate that technology into its internal operations. A Postal Rate Commission website which provides timely notice of docket filings in ongoing cases, among other functions, has been operational since 1997 and is marked by continual improvements. In docket No. R97–1, the Commission permitted participants to file computer diskettes for some filings in conjunction with a significantly reduced number of required hard copies of the particular filing. In docket No. MC98–1, the Mailing Online Service classification case, the Commission proposed an electronic service experiment for all filed documents. The optional electronic service experiment was presented as a cost savings option for participants, with simplified, reduced mailing requirements for hard copies of documents. Interested intervenors were given the option to participate either fully or in a more restricted capacity. A number of intervenors successfully participated in the electronic service experiment.

Commenters in this docket commend the Commission's efforts to take advantage of today's technology, particularly citing the convenience of the PRC website. However, while finding merit in the reduced filing costs and timely availability of filings associated with electronic service in a limited Commission proceeding, all commenters note that hardcopy service retains significant advantages, particularly in larger omnibus proceedings. In a larger proceeding, the process of downloading and printing lengthy filed documents from numerous parties may prove to be an onerous and costly task, with significant, expensive professional time devoted to review of the internet filings in order to determine which documents merit printing. One commenter warns of the potential computer ''traffic jams'' on those days when briefs or testimony are filed in future cases, as numerous intervenors attempt to access and download filed documents at the same time. Further, it is implied that a participant's case may be compromised if he is unable to expend the required time and resources. More than one commenter highlighted that not all proceeding participants have joined the ''information superhighway,'' thus automatically disadvantaging those parties.

In general, commenters advise a cautious approach toward electronic filing. In fact, one commenter maintains that the Commission should not move beyond the stage of experimental voluntary electronic filing without first conducting a cost/benefit analysis of the process. Thus, while there is some support for experimental voluntary electronic filing, commenters generally advocate that the Commission retains the requirement of hard-copy service by participants, at least upon other parties, while continuing to provide PRC website information on filings.

An alternate proposal for electronic service, which allegedly overcomes some of the aforementioned considerations, is offered by one commenter. Under the alternate proposal, participants in a particular case could choose to receive all Office of the Consumer Advocate (OCA) and Commission documents electronically via the Commission's website, with the Commission also serving all non-participating intervenors a hard copy of each participating intervenor's filing. Participants would be required to file an original and three copies of a filing, plus an electronic version of the filing. Participants further would be responsible for serving the opposing party with one hard copy (or, in the case of the Postal Service, six hard copies). The Commission otherwise would photocopy and mail the documents.

While trying to keep pace with technology and realize its obvious benefits to Commission proceedings, the Commission still appreciates the disadvantages currently associated with exclusive electronic service, as highlighted by the commenters. In particular, the Commission is cognizant of the potential difficulties associated with the review and printing of numerous, lengthy filings that are typical of an omnibus rate proceeding, and understands that some proceedings of a limited nature may be more appropriate for application of electronic service at this stage. Accordingly, the Commission proposes reserving the option to implement electronic service on a case-by-case basis, by amending part (e) of rule 12 (service of documents) to read ''[s]ervice via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.''

Miscellaneous Updates of Commission Rules

The Commission proposes that several current rules be updated primarily to reflect certain institutional changes. Section 4 (or rule 4) amends the manner in which the rules of practice may be cited. Rule 5 revises the definition of ''presiding officer'' and also now includes a definition of the OCA. Rule 7, which discusses ex parte communications, has eliminated the reference to an administrative law judge, as the Commission no longer utilizes administrative law judges, and has been clarified as applicable to all participants. Rule 9, filing of documents, is revised to include notification of the presiding officer by the Commission's Secretary in the event of an unacceptable filing, and to eliminate such notification to the parties, except for the sender of the unacceptable document. Rule 12 on the service of documents has been altered to provide for electronic filing under certain circumstances. Rule 18, which describes the nature of proceedings, now indicates that the Commission may, rather than shall, hold a public hearing if one is requested by a party. Rule 19, regarding notice of a prehearing conference or hearing, eliminates a reference to Commission designation of a presiding officer by **Federal Register** notice, as designation is a function of the Chairman. That rule also now reflects Commission practice of providing notice of the reconvening of a hearing to all participants in a proceeding by issuing a ruling served on all participants (if necessary), rather than through publication of such notice in the **Federal Register**. Rule 43, which addresses public attendance at Commission meetings, has substituted the office of the Secretary for all references to the Office of Public Information, which no longer exists.

Service on the OCA

Several rules relating to discovery have been revised to include mandatory service of documents on the OCA. Affected rules include rules 26(a), 26(c), 27(a), 27(c), 28(a) and 28(c). The aforementioned rules also reflect renumbering to accommodate actions taken in this rulemaking. Additionally, the distinction between parties and participants has been applied in rules 7, 12, 25, 26, 27, 28, and 30.

Minor Changes

Some rule changes simply reflect altered numbering within the rule, or a change in wording to effect a more specific reference. Thus, rule 17—addressing notice of proceeding—includes new renumbering of some sections. Rules 18 (nature of proceedings), 19 (notice of prehearing conference or hearing), 20 (formal intervention) and 20a (limited participation by persons not parties) now specifically cite to proceeding notice pursuant to section (a) of rule 17, rather than generally referring to rule 17. Likewise, rules 27(b) and (e) (answers and orders regarding requests for production of documents or things for purpose of discovery) and rules 28(b) and (e) (answers and orders regarding requests for admissions for purpose of discovery) provide for service of such documents and answers pursuant to § 3001.12(b).

Finally, the Commission proposes substantive changes to rule 31(k)(3)(i), which was the subject of one commenter's remarks and therefore will be discussed in detail below.

Other Suggestions by Commenters

Several commenters have offered detailed suggestions regarding substantive revisions of the rules of practice and procedure, which have been carefully considered by the Commission. These suggestions, accompanied by Commission responses, include:

I. Elimination of Required Production of Hardcopy Listings of Data Files, Other Computer Information

One commenter suggests that the Commission amend rule 31(k)(3)(i), which currently appears to require that a hardcopy ''listing of the input and output data and source codes'' be provided as a foundation for each computer analysis being offered as evidence. The commenter asks that the Commission change the foundational requirements of the rule to require production only of electronic versions of data or source code, and also to eliminate the provisions which provide for production of the items upon request. Alternatively, it is suggested that the Commission not specify the medium of presentation for such information, allowing the provision only of electronic media. In support of these suggested amendments, the commenter argues that: (1) Any party who wishes to ''investigate, replicate or validate'' a computer analysis will likely prefer to load the source code and input the data on its own computers, a task better-suited for an electronic version of this information, particularly if the data bases involved are extensive; and (2) a requirement that data and source code be provided in hardcopy form is redundant, as almost any party can readily produce a hardcopy product from an electronic version of the document in question.

The Commission agrees that the nature of the documents filed under rule 31(k)(3)(i), in conjunction with current technology and established practice of recent years, indicate that electronic filing is the appropriate format for the mandatory submission of the specified information. However, paper copies of the data files still serve a useful purpose, particularly to those parties who may not have access to the ''information superhighway,'' and therefore could be disadvantaged in a Commission proceeding were the request for provision of hardcopy documents unavailable. With this in mind, the Commission proposes that rule 31(k)(3)(i) be modified to require a machine readable copy of the input and output data, source codes and program files submitted as the foundation for computer studies or analyses which are being offered in evidence or relied upon as support for other evidence. Hard copies of all data bases and source codes will be deemed presumptively necessary and furnished upon request, unless the presumption is overcome by an affirmative showing. The Commission believes that this revision will facilitate the process of data production and analysis, as well as fully protect the due process rights of participants by providing alternative means of access to such information, without necessarily imposing onerous burdens of production upon the provider.

II. Streamlining of Rules Pertaining to Intervention and Participation

One commenter proposes that the Commission streamline the rules concerning party intervention and participation in Commission proceedings by eliminating rules 20, 20a and 20b. These rules identify three classes of party intervention and participation, with varying rights and obligations. Elimination of the rules would allow all interested parties who intervene to participate on an equal footing. It is also suggested that the Commission could further streamline its general rate and classification proceedings by maintaining a list of parties interested in automatic intervention, with implementation of the list upon the filing of such a case. In that manner, a more efficient service of documents upon ''the core of parties who intervene in Commission proceedings as a matter of course'' could be effectuated.

According to rules 20, 20a and 20b, intervention and participation by an interested party in a Commission proceeding may range from full intervention in all aspects of a case to a limited filing on the party's behalf. The rules recognize that intervenors have varying degrees of interest in issues presented in a particular proceeding, as well as different amounts of resources to expend. While simplifying the rules to provide that all interested parties participate ''on a equal footing'' may appear to promote fairness, in fact, the opposite may result. Full participation imposes certain obligations on the part of an intervenor, which may prove to be burdensome and prohibitive, particularly to those intervenors with limited time and resources. For these reasons, the Commission declines to revise rules 20, 20a and 20b, as suggested.

Current Commission practice regarding party intervention requires only that a notice of intervention in a proceeding be submitted by an interested party. Late intervenors must file a motion to be allowed participation in a particular proceeding. This process allows the Commission to control its docket and, in the case of late intervention, appropriately assess the merits of intervention at that point of time. The process also provides notice of parties active in a proceeding (and their respective degree of activity) to other participants. The Commission finds no compelling reason to alter these rules to allow for the automatic intervention of interested parties in Commission proceedings (particularly omnibus rate cases) beyond the provisions to this effect, which currently apply to a small number of expedited proceedings (including market tests and provisional service changes).

III. Limiting of Certain Aspects of Discovery

One commenter proposes that the Commission consider imposing numerical limitations on discovery requests in rate and classification proceedings in order to more effectively focus discovery efforts, reduce the parties' burden of participation, encourage the use of informal avenues of discovery (such as informal technical conferences) and ultimately improve the efficiency of Commission proceedings. According to the commenter, the due process rights of parties will not be compromised by such an imposition. In

support of this proposition, the commenter cites rules 26, 29–37 of the federal rules of civil procedure, which place a number of limitations on the discovery process in federal civil proceedings, including the number of interrogatories (25) a party may serve on any other party.

The Commission must reject the commenter's efforts to limit the written discovery process, particularly in omnibus rate proceedings. The Postal Service functions as a national monopoly, with the private express statute applicable to the vast majority of mail. Mailers thus are required by law to pay whatever rates are set, and clearly possess a vested interest in the process of determining these rates. Written discovery expedites the process of determining and setting fair rates and fees, allows for a more complete record, and also reduces (but does not eliminate) the need for oral cross-examination.

Further, the potential for ''prolific'' discovery efforts complained of by the commenter must be weighed against the protection of parties' due process rights and the increasingly complex, technical nature of Commission proceedings (which may be distinguished from typical federal court cases). Thus, while the Commission does understand the rationale for the commenter's suggestion, it is persuaded that the aforementioned considerations advise against instituting any additional limitations on the discovery process.

IV. Elimination of the Assumption That Witnesses Will Be Subjected to Oral Cross-examination.

One commenter suggests that the Commission alter the rules of Practice and Procedure to hold that each party requesting oral cross-examination be required to demonstrate why written submission is not sufficient to achieve that party's objective. The commenter notes that current practice relies heavily on written submissions, and that limitations on oral cross-examination is consistent with section 556 of the Administrative Procedure Act, which provides solely for ''such cross-examination as may be required for a full and true disclosure of the facts.'' 5 U.S.C. 556(d). It is argued that parties' due process rights will still be preserved, while imposing a more streamlined, disciplined approach to discovery. It is conceded that such a change in the Commission rules may lead to increased motion practice.

The Commission views the opportunity for participants to conduct oral cross-examination of witnesses, particularly in such complex litigation as is routinely before it, as the hallmark of due process. The written submission of testimony and subsequent interrogatory practice, while certainly serving a function, in no way supercede the purpose of a live hearing on the issues. One need only consider the problems which arose in docket no. R97–1 regarding certain Postal Service library references, and the parties' expressed interest in cross-examination of the sponsoring (but unnamed) witnesses. It is acknowledged that there have been occasions when a witness has been summoned for cross-examination, only to do no more than authenticate his or her pre-filed testimony and interrogatory responses. However, such occurrences are infrequent, as in practice, counsel normally ascertain through informal contact with other parties that appearance of a particular witness is unnecessary. In any event, this inconvenience is a small price to pay to ensure that each participating party is accorded a full opportunity to investigate the issues in a given case, which may be most effectively achieved through the interplay of cross-examination. Moreover, while the Commission does grant a certain latitude during cross-examination, it also is mindful of the purpose of the exercise and applies constraint accordingly, as provided for in Commission rule 30(f). For these reasons, as well as the desire to avoid a possible floodgate of motion practice, the Commission declines to amend the rules to create a presumption against oral cross-examination.

V. Elimination of Oral Argument

According to one commenter, Commission rules could be further streamlined by the elimination or modification of those rules governing oral argument (rules 36 and 37), such that oral argument is no longer an available option or is scheduled only in truly extraordinary circumstances. In docket no. R97–1, there were no requests by parties for oral argument before the Commission. The commenter suggests that this circumstance appears to indicate an increased acceptance by the parties that oral argument is not the most productive use of either the participants' or the Commission's time. The Commission traditionally has provided the opportunity for oral argument during its proceedings. The commenter provides no compelling rationale for the Commission to depart from this practice. It is true that no party asked for oral argument in docket no. R97–1. However, such requests routinely have been made in previous omnibus rate cases. Unlike the commenter, the Commission does not view the absence of a request for oral argument in the last omnibus rate case as participant acknowledgement that oral argument serves a limited purpose. A number of factors, including the compressed time schedule subsequently imposed in that docket, may have contributed to participants' foregoing of the opportunity. In the absence of adequate cause to eliminate or limit the option of oral argument, the Commission remains firm in its belief that such requests should be decided on a case-by-case basis, with no presumption for or against the conduct of oral argument codified in the Commission's rules.

VI. Amendment of Rules to Provide for Early Summary Disposition of Issues in a Proceeding and for Settlement

One commenter has suggested that procedures be established to bring forth settlements (rather than merely encourage them), and that a process for summary disposition of issues early in a case be created. The commenter does not specify particular procedures, but does note that these recommendations were made to the Commission in an earlier rulemaking docket (Docket No. RM95–2) which was created to streamline Commission rules.

As the commenter has noted, the Commission's rules of practice and procedure do encourage settlement of issues among the parties. The Commission is unclear as to what procedures would more affirmatively promote settlement, and the commenter is silent on the matter. Were a specific process for settlement proposed, the Commission still would be inclined to direct that the process first be applied in a particular case to determine its feasibility prior to any promulgation of a rule. The same may be said of the commenter's suggestion for early summary disposition of particular issues in a proceeding. In this instance, the Commission is compelled to exercise extreme caution, as litigation practice has demonstrated that issues which have appeared at first blush to be ''non-controversial'' often have proved to be otherwise.

II. Amendment of the Filing Requirements Associated with Motions to Accept Late-filed Affidavits

One commenter addresses the late filing of a declaration or affidavit of a witness in support of an interrogatory response which could not be attached to the response when it was originally filed. According to the commenter, these late filings, which consist of a motion for leave explaining why the

declaration/affidavit is untimely, the declaration/affidavit and the certificate of service, may be unwarranted in toto, as each witness eventually adopts his interrogatory responses under oath as written cross-examination. In an effort to reduce costs and paperwork, the commenter suggests that the Commission: (a) Encourage parties to file all such ''make-up'' motions at one particular time; (b) encourage or require the parties to put the certificate of service and the motion on the same sheet of paper; or (c) entirely eliminate the affidavit requirement through adoption of a general rule to the effect that all interrogatory responses are deemed to be under oath.

Current rule 25 (b) adequately addresses the commenter's concern. Note: Under the instant proposal, current rule 25, as revised, would become rule 26. First, rule 25(b) permits the use of a declaration of accuracy as well as an affidavit. Second, although answers must be signed by the person making them, if that person is unavailable at the time the answers are filed, a signature page must be filed within ten days with the Commission, but need not be served on participants. The Commission, therefore, finds it unnecessary to revise its rules as suggested by the commenter.

For the reasons discussed above, the Commission proposes to amend Subpart A of its rules of practice and procedure as set forth below.

Ordering paragraphs. The first ordering paragraph invites interested persons to submit comments on the proposed revisions no later than January 21, 2000. The second ordering paragraph directs the Secretary to cause this order to be published in the **Federal Register**, in accordance with all applicable regulations of the Office of the Federal Register.

Dated: December 21, 1999.

Cyril J. Pittack,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend 39 CFR part 3001—Rules of Practice and Procedure Subpart A—Rules of General Applicability as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules of General Applicability

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603, 3622–24, 3661, 3662, 3663.

2. Revise § 3001.4 to read as follows:

§ 3001.4 Method of citing rules.

This part shall be referred to as the ''rules of practice.'' Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, ''3001.24 *Prehearing conferences*'' shall be referred to as ''section 24'' or ''rule 24.''

3. Amend § 3001.5 by revising paragraph (e) and adding paragraph (q) to read as follows:

§ 3001.5 Definitions.

* * * * *

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

* * * * *

(q) *Office of the Consumer Advocate* or *OCA* means the officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

4. Amend § 3001.7 by revising paragraph (d)(1) to read as follows:

§ 3001.7 Ex parte communications.

* * * * *

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of paragraph (b) of this section, the Commission or presiding officer at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

* * * * *

5. Amend § 3001.9 by revising paragraph (b) to read as follows:

§ 3001.9 Filing of documents.

* * * * *

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and the presiding officer in the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

6. Amend § 3001.10 as follows:

a. Redesignate paragraph (c) as (d),

b. Revise redesignated paragraph (d); and

c. Add new paragraph (c) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(c) *Computer diskette.* Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, in lieu of the other requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of one printed original and three hard copies. Attachments will be accepted in their native format (i.e., Excel, Lotus, etc.). Documents must be submitted in Arial 12 point Font, or such program, format, or font as the presiding officer may designate to assist with optical character recognition (OCR).

(d) *Number of copies.* Except for correspondence, computer diskette filing as provided for in paragraph (c) of this section, or as otherwise permitted by the Commission, the Secretary or the presiding officer in any proceeding, all persons shall file with the Secretary an original and 24 fully conformed copies of each document required or permitted to be filed under this part.

7. Amend § 3001.12 as follows:

a. Revise paragraph (b),

b. Revise paragraph (d), and

c. Revise paragraph (e) to read as follows:

§ 3001.12 Service of documents.

* * * * *

(b) *Service by the participants.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such

groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.26 (a) and (c), 3001.27 (a) and (c), and 3001.28 (a) and (c), and except for designations for written cross-examination, notices of intent to conduct oral cross-examination and notices of intent to participate in oral argument, which need be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service. Also, discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service, the complementary party, and on any other participant so requesting, as provided in sections 26–28 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participating with the address and, if possible, a telephone number and facsimile number designated in the participant's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c). The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. Service on the Secretary's service list in any proceeding, as directed by the Commission or the presiding officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by First-Class Mail or personal delivery to the address shown for the persons designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Chief Counsel, Rates and Classification, U.S. Postal Service, Washington, DC 20260–1170. Service via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.

* * * * *

§ 3001.17 [Amended]

8. Amend § 3001.17 by redesignating paragraphs (a–1), (b) and (c) as paragraphs (b), (c) and (d).

9. Amend § 3001.18 by revising paragraph (a) to read as follows:

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* In any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

* * * * *

10. Revise § 3001.19 to read as follows:

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a) the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the **Federal Register** and served on all participants in the proceeding involved. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

11. Amend § 3001.20 by revising paragraph (a) to read as follows:

§ 3001.20 Formal intervention.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

* * * * *

12. Amend § 3001.20a by revising the introductory text to read as follows:

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions;

* * * * *

13. Amend § 3001.21 as follows:

a. Revise paragraph (b), and

b. Add new paragraph (c) to read as follows:

§ 3001.21 Motions

* * * * *

(b) *Answers.* Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

§ 3001.28 [Removed]

14. Remove § 3001.28.

§§ 3001.25, 3001.26 and 3001.27 [Redesignate as §§ 3001.26, 3001.27 and 3001.28, respectively]

15. Redesignate §§ 3001.25, 3001.26 and 3001.27 as §§ 3001.26, 3001.27, 3001.28.

16. Revise redesignated § 3001.26 to read as follows:

§ 3001.26 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish

such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall also serve the Postal Service and the OCA. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall serve the answers on the participant who served the interrogatories within 14 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit. Answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within 10 days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory, the Postal Service, and the OCA within seven days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the participant who moved to compel the answer within seven days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

(f) *Supplemental answers.* The individual or participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

17. Revise redesignated § 3001.27 to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 14 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the

answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests shall serve the objections on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA within 7 days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the participants making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced also shall be filed pursuant to § 3001.9 and served pursuant to § 3001.12(b). The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

18. Revise redesignated § 3001.28 to read as follows:

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests for admissions shall serve the objections on the participant requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA, within seven days of the request. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to requests for admissions.* Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be served on the participants who moved to compel the answers within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to § 3001.9 and served upon other participants pursuant to § 3001.12(b). If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

19. Add § 3001.25 to read as follows:

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal

means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

20. Amend § 3001.30 by revising paragraph (e) to read as follows:

§ 3001.30 Hearings.

* * * * *

(e)(1) *Presentations by participants.* Any participant, including the Postal Service, shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).'' When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness and should include (a) specific references to the subject matter to be examined and (b) page references to the relevant direct testimony and exhibits. Participants intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

* * * * *

21. Amend § 3001.31 as follows:

a. Revise paragraph (c),

b. Revise paragraph (d),

c. Revise paragraph (e),

d. Revise paragraphs (k)(3)(i)(*d*) through (*f*), and

e. Revise paragraph (k)(3)(i)(*i*) and paragraph (k)(4) to read as follows:

§ 3001.31 Evidence.

* * * * *

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

* * * * *

(e) *Designation of evidence from other Commission dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10(a) and (b).

* * * * *

(k) * * *

(3) * * *

(i) * * *

(*d*) A hard copy of all data bases;

(*e*) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(*f*) The source code in hardcopy form;

* * * * *

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file so provided

must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

22. Amend § 3001.43 as follows:

a. Revise paragraphs (e)(4) introductory text and (e)(4)(i),

b. Revise paragraph (g)(1)(iii), and

c. Revise paragraph (g)(2)(iii) to read as follows:

§ 3001.43 Public attendance at Commission meetings.

* * * * *

(e) * * *

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 1333 H Street, NW., Suite 300, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1)(i) * * *

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the Notice of Meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary ten working days after the meeting.

* * * * *

(2)(i) * * *

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the Notice of Meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

[FR Doc. 99–33556 Filed 12–27–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN110–1b; FRL–6483–3]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revised source specific lead emissions limits for the Hammond Group—Halstab Division (Halstab) facility located in Hammond, Indiana which is located in Lake County. This requested revision to the Indiana State Implementation Plan (SIP) was submitted by the State of Indiana on May 18, 1999.

DATES: Written comments must be received on or before January 27, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used we mean EPA.

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I. What Action is EPA Taking Today?

We have examined the State's SIP revision request and the supporting documentation provided by the State. Based on the merits of the information supplied, EPA is proposing to approve the incorporation of 326 IAC 15–1–2(a)(7) (A) through (G) into the Indiana SIP.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: November 19, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–33026 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE 047–1024b, MD 089–3042b, PA 140–4092b, VA 104–5043b ; FRL–6484–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, Pennsylvania, and Virginia; Approval of National Low Emission Vehicle Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware and Maryland, and by the Commonwealths of Pennsylvania and Virginia for the purpose of adopting a National Low Emission Vehicle Program. In the Final Rules section of this **Federal Register**, EPA is approving these states' SIP submittal as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule for the affected states will be withdrawn 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 action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2000.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public

inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of state-specific materials may be reviewed at each respective state's offices, at: the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19903; the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; or at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, at the EPA Region III address above, or by e-mail at Rehn.Brian@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, which is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: November 18, 1999.

Alvin R. Morris,

Acting Regional Administrator, Region III.

[FR Doc. 99–33028 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6514–4]

Section 112(l) Proposal of the State of Florida's Rule Adjustment to the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the adjustment of the ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities,'' (PERC) National Emission Standards for Hazardous Air Pollutants (NESHAP), delegated to the Florida Department of Environmental Protection (FDEP). This PERC NESHAP delegated to the State of Florida is approved through the section 112(l) procedures outlined in 40 CFR 63.92 and 63.91 of section 112 of the Clean Air Act as amended in 1990. On April 9, 1999, the State of Florida submitted a request for adjustment to the requirements of 40 CFR 63.10(b)5. The requested adjustment by FDEP would allow the periodic startup, shutdown, and malfunction reports in 40 CFR 63.10(d)(5) of the General Provisions, to be retained on site at area source PERC NESHAP affected facilities instead of submitting them to the delegated agency. EPA has reviewed this 112(l) adjustment request and determined that the FDEP has satisfied the necessary criteria of a complete submittal as specified in 63.92 and 63.91.

In the Final Rules section of this **Federal Register**, EPA is approving the section 112(l) adjustment of Florida's delegated PERC NESHAP as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 27, 2000.

ADDRESSES: All comments should be addressed to: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303; ceron.leonardo@epamail.epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303, Phone: (404) 562–9129; ceron.leonardo@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: December 3, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–33330 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

[Docket No. RSPA–99–6283 (HM–230)]

RIN 2137–AD39

Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: RSPA is considering issuing a notice of proposed rulemaking (NPRM) proposing to amend requirements in the Hazardous Materials Regulations (HMR) pertaining to the transportation of radioactive materials based on recent changes contained in the International Atomic Energy Agency (IAEA) publication, entitled ''IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Material, 1996 Edition, Requirements, No. ST–1'' (hereafter referred to as ST–1). The purpose of this rulemaking initiative is to harmonize requirements of the HMR with international standards for hazardous materials. Comments are requested from interested persons concerning the scope of the NPRM, *i.e.*, extent to which differences between the HMR and the IAEA publication ST–1 should be considered in proposing changes to the HMR.

DATES: Submit comments by March 29, 2000. To the extent practicable, we will consider comments received after this date.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should refer to Docket Number RSPA–99–6283 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help &

Information'' to obtain instructions for filing the comment electronically. In every case, the comment should refer to the Docket number ''RSPA–99–6283''.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at ''http://dms.dot.gov/.''

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In 1958, at the request of the Economic and Social Council of the United Nations, the IAEA undertook the development of international regulations for the safe transportation of radioactive materials. The IAEA published its initial regulations in 1961, and recommended these to member states as the basis for national regulations and for application to international transportation. Most nations have since adopted the IAEA regulations as a basis for national regulations governing the transportation of radioactive materials.

In 1967, after extensive revisions, the IAEA published its regulations entitled ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6.'' In October 1968, DOT published amendments for radioactive materials which were in substantial conformance with the 1967 IAEA regulations (Docket HM–2, 33 FR 14918).

Based on work done by participants from member states, including the U.S., the IAEA issued two subsequent major updates of Safety Series No. 6, in 1973 and 1985. On March 10, 1983, RSPA published a final rule (Docket HM–169, 48 FR 10218), bringing the HMR requirements relating to the transportation of radioactive materials into alignment with the 1973 IAEA regulations. On September 28, 1995, RSPA published a final rule (Docket HM–169A, 60 FR 50291) that revised the radioactive materials requirements in the HMR to align them with the 1985 revision of Safety Series No. 6. In each case, DOT coordinated these revisions to the HMR with the Nuclear Regulatory Commission (NRC), which concurrently revised 10 CFR 71, and in each case these revisions made the United States radioactive material transport regulations compatible with those of most other industrialized nations.

Following the major revisions of Safety Series No. 6 in 1973 and 1985, the IAEA published the most recent major revision in 1996; at this time Safety Series No. 6 became ST–1. Copies of ST–1 may be obtained from the U. S. distributor, Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, telephone (301) 459-7666.

The ST–1 requirements listed in the following section are under consideration for possible incorporation into the HMR. Concepts described there which are not presently found in the HMR are: nuclide-specific activity concentration and consignment activity thresholds, the criticality safety index (CSI), the fissile label, compliance with ISO Standard 7195 for uranium hexafluoride packages, the use of Certificates of Competent Authority for international shipments of these packages, the definition of contamination, Type C packages, and low dispersible material. The remaining changes listed are modifications of present concepts or practices.

As in past rulemakings to incorporate updates of the international regulations into the HMR, RSPA will work in close coordination with the NRC in developing this rulemaking.

II. Areas of Regulatory Concern

A partial list of ST–1 requirements under consideration for incorporation in the HMR is given below. With the one exception indicated in item 5 below, the listed items differ from both the present requirements in Safety Series No. 6, 1985 Edition and in the HMR. These ST–1 requirements have been grouped into the following seven areas. Interested persons are invited to review and comment on these areas, and to identify other related issues RSPA should address in any further rulemaking under this docket. Sections, paragraphs and tables cited below are from ST–1.

1. Scope

The scope of ST–1 is described in paragraphs 106 through 109 of that document. For the most part, changes from Safety Series No. 6 are minor; for example, the wording has been modified to indicate that the regulations apply to the repair of packagings, as well as their design, fabrication, and maintenance. Whereas previously the regulations were said to apply to the preparation, consigning, handling, carriage, storage in transit, and receipt of packages, the word ''handling'' has been removed and the words ''loading'' and ''unloading'' added, and these actions are now applied to ''loads of radioactive material and packages.'' Three severity levels have been defined to aid in the application of a graded approach to the performance standards: routine (incident free), normal (minor mishaps), and accident conditions of transport. Note that a certain subset of naturally occurring radioactive materials is excluded from consideration (paragraph 107).

2. Nuclide-Specific Thresholds

ST–1 introduces nuclide-specific activity concentrations below which materials are exempt from the transportation requirements for radioactive materials. In addition, it lists nuclide-specific activity values such that a consignment with an activity below that value is also exempt from the transportation requirements for radioactive materials. These nuclide-specific thresholds, and the A_1 and A_2 values for maximum activity permitted in a Type A package, are found in Tables I and II of Section IV, and related information is given in paragraphs 401 through 406. Many A_1 and A_2 values have been adjusted to reflect more recent dosimetric data; in general, the adjustments are not large.

3. Communication Changes

Proper shipping names and UN identification numbers are changed (Table VIII). UN identification numbers are now required to be marked on all packages, including excepted packages (paragraph 535). Activities must be expressed in SI units (paragraphs 543 and 549). The former criticality transport index (criticality TI) for fissile material has been abolished, and replaced with the criticality safety index (CSI) (paragraph 218); TI is now derived exclusively from the maximum radiation dose rate at one meter from the package (paragraphs 243, 526, 527). For fissile material, a fissile label is introduced, upon which the CSI must be displayed (Figure 5, paragraphs 544, 545).

4. Uranium Hexafluoride

There are specific performance and design requirements for packages containing uranium hexafluoride (paragraphs 629–632), including conformance with ISO Standard 7195, ''Packaging of Uranium Hexafluoride (UF_6) for Transport.'' Competent Authority package design certificates are required for international shipments of uranium hexafluoride (paragraph 828).

5. Low Specific Activity (LSA) materials and Surface Contaminated Objects (SCO)

An additional category has been included under LSA–I (paragraph 226). The definition of contamination (paragraphs 214–216), while not new, was not included in the 49 CFR 173.403 definitions when the regulations in Safety Series No. 6, 1985 Edition were incorporated in the HMR. In addition to the tanks and freight containers presently authorized in the HMR, ST–1 also allows qualified tank containers and metal intermediate bulk containers to serve as industrial packagings, types 2 and 3 (IP–2 and IP–3; paragraphs 624–628).

6. Type B and Fissile Material Package Requirements

Upper limits have been set for the amount of activity which may be transported by air in Type B(U) and B(M) packages (paragraph 416). There is an enhanced water immersion test for Type B(U) and B(M) packages containing activities greater than 10^5 A_2 (paragraphs 657, 730). A definition of confinement system for fissile material is introduced (paragraphs 209, 678). Changes have been made in the conditions under which fissile materials may be excepted from the requirements for fissile packages (paragraph 672).

7. Other Changes

A Type C package is introduced for transport by air of activities larger than the upper limits for Type B(U) and B(M) packages (paragraphs 230, 667–670, 730, 734–737). Fissile material packages to be transported by air must be shown to remain subcritical under tests for Type C packages (paragraph 680 (a)). The concept of low dispersible material (LDM) is introduced as a new form of radioactive material which may be carried in a Type B(U) or B(M) package (paragraphs 225, 605, 663, 712). LDM must be certified as such by the Competent Authority (paragraphs 803, 804, 828, 830). Transitional requirements for packagings and special form materials manufactured under earlier revisions of Safety Series No. 6 are described in paragraphs 815–818.

III. Request for Comments

Interested persons are invited to review and comment on any or all of the requirements in ST–1 which differ from current HMR requirements, and to identify related issues RSPA should address in any further rulemaking under this docket. Comments should focus on the potential for improved safety, as well as the ease or difficulty, and the advantages and disadvantages, of complying with requirements of ST–1 that may be incorporated into the HMR. For example, do any of the new A_1 or A_2 values pose a problem? What effect would the use of nuclide-specific threshold activity concentrations and consignment activities have on safety and on your operations? How would the proposed proper shipping name changes, or the requirement for marking the UN identification number on all packages, affect what you do? What would be the effect of the ST–1 uranium hexafluoride packaging requirements? How important to safety is the ST–1 requirement to obtain a Competent Authority certificate for international shipments of uranium hexafluoride? Would safety be improved by incorporation of the new LSA–I category, or the use of metal intermediate bulk containers as IP–2 and IP–3 packagings? Would the activity limits on air transport of Type B packages, or the introduction of Type C packages and low dispersible material have a significant impact on safety, and what would be the effect on your operations?

Comments supporting a position for or against the adoption of a particular requirement should include a supporting justification for the position taken.

There are a number of additional issues that we must address in determining whether to adopt some or all of the provisions contained in ST–1. These include the analyses required under the following statutes and Executive Orders:

1. *Executive Order 12866: Regulatory Planning and Review.* Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with the provisions in ST–1, including specific costs associated with adoption of any of the ST–1 provisions.

2. *Executive Order 13132: Federalism.* Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) preempts many state and local laws and regulations concerning hazardous materials transportation that are not the same as the federal requirements. Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We invite comments on the effect that adoption of some or all of the ST–1 provisions may have on state or local safety or environmental protection programs.

3. *Executive Order 13084: Consultation and Coordination with Indian Tribal Governments.* Executive Order 13084 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We invite Indian tribal governments to provide comments as to the effect that adoption of some or all of the proposals in ST–1 may have on Indian communities.

4. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. We invite comments as to the economic impact that adoption of some or all of the provisions in ST–1 may have on small businesses.

IV. ST–1 Resources

A copy of ST–1 may be reviewed in the RSPA Records Center between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Records Center is located in Room 8421 of the Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590–0001. Review requests should refer to the Docket number ''RSPA–99–6283''. In addition, copies of ST–1 may be obtained from the U. S. distributor, Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, telephone (301) 459–7666.

V. Regulatory Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and

Procedures of the Department of Transportation (44 FR 11034).

B. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC on December 22, 1999, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–33580 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–60–P

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

50 CFR Part 635

[I.D. 121799E]

Atlantic Highly Migratory Species Fisheries; Public Hearings; Advisory Panel Meeting

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

ACTION: Notice of public hearings and Advisory Panel meeting; request for comments.

SUMMARY: NMFS will hold 10 public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations to implement time/area closures for Atlantic pelagic longline fishermen who hold highly migratory species (HMS) permits. To accommodate people unable to attend a hearing or wishing to provide written comments, NMFS also solicits written comments on the proposed rule. In addition, NMFS will hold a joint meeting of the HMS and Billfish Advisory Panels (APs), to discuss future fishery management actions and advise NMFS.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting and hearing dates and times. Written comments on the proposed rule must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m., eastern standard time, on February 11, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for meeting and hearing locations. For informational materials related to the AP meeting and copies of the draft Technical Memorandum and Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) contact Margo Schulze-Haugen or Jill Stevenson at 301–713–2347, or write to Rebecca Lent.

Written comments on the proposed rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Jill Stevenson at 301–713–2347.

SUPPLEMENTARY INFORMATION: The proposed regulations that are the subject of the hearings are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act for the conservation and management of HMS.

A complete description of the measures, and the purpose and need for the proposed actions, is contained in the proposed rule, published December 15, 1999 (64 FR 69982), and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or by calling one of the listed contact persons (see **FOR FURTHER INFORMATION CONTACT**).

NMFS is currently considering AP member nominations for the 2000–2002 period. NMFS will send out selection letters to new AP members shortly and announce the new AP members to constituents via the fax network.

Hearing and Meeting Dates, Times, and Locations

The public hearing schedule is as follows:

Tuesday, January 4, 2000—Kill Devil Hills, NC, 7:00-9:30 p.m.

Ramada Inn, 1701 S. Virginia Dare Trail, Kill Devil Hills, NC 27948

Wednesday, January 5, 2000—Charleston, SC, 7:00-9:30 p.m.

Department of Natural Resources, Marine Research Institute Auditorium, 217 Fort Johnson Road, Charleston, SC 29412

Monday, January 10, 2000—Jacksonville, FL, 7:00-9:30 p.m.

Omni Jacksonville Hotel, 245 Water Street, Jacksonville, FL 32202

Tuesday, January 11, 2000—Fort Pierce, FL, 7:00–9:30 p.m.

Radisson Resort North Hutchinson Island, 2600 North A1A, Fort Pierce, FL 34949

Wednesday, January 12, 2000—Pompano Beach, FL, 7:00–9:30 p.m.

Pompano Beach Civic Center, 1801 NE. 6th Street, Pompano Beach, FL 33060

Thursday, January 13, 2000—Panama City, FL, 7:00–9:30 p.m.

National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408

Tuesday, January 18, 2000—Gloucester, MA, 2:00–4:30 p.m.

National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930

Wednesday, January 19, 2000—Fairhaven, MA, 7:00-9:30 p.m.

Seaport Inn, 110 Middle Street, Fairhaven, MA 02719

Tuesday, January 25, 2000—Port Aransas, TX, 7:00–9:30 p.m.

University of Texas at Austin, Marine Science Institute, 750 Channel View Drive, Port Aransas, TX 78337

Wednesday, January 26, 2000—Miami, FL, 7:00-9:30 p.m.

Sheraton Biscayne Bay Hotel, 495 Brickell Avenue, Miami, FL 33131

Wednesday, February 2, 2000—Atlantic City, NJ, 7:00-9:30 p.m.

Atlantic Community College, 1535 Bacharach Boulevard, Atlantic City, NJ 08401

Wednesday, February 9, 2000—Silver Spring, MD, 7:00-9:30 p.m.

NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20190

The public hearing on February 9, 2000, will be held in conjunction with the AP meeting scheduled for that day. AP meetings are open to the public. The AP meeting schedule is as follows:

Wednesday, February 9, 2000—Silver Spring, MD, 1:00 p.m. to 5:30 p.m.

Thursday, February 10, 2000—Silver Spring, MD, 8:00 a.m. to 6:00 p.m.

Friday, February 11, 2000—Silver Spring, MD, 8:00 a.m. to 1:00 p.m.

NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

The Advisory Panels will discuss the ''1999 Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory

Species'', limited entry in HMS fisheries, bycatch reduction measures (time/area closure proposed rule, turtle bycatch concerns), economic data collection, assessing social impacts on HMS fishing communities, division of the BFT Angling category, authorized gears, charter/headboat regulations, observers, vessel upgrading and permit transfer requirements. Issues for upcoming rulemakings include trade restrictions and swordfish quotas, and future options for HMS fishery management.

Special Accommodations

The hearings and the AP meeting are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing or meeting.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: December 21, 1999.

Gary C. Matlock,

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

[FR Doc. 99–33522 Filed 12–21–99; 4:17 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 248

Tuesday, December 28, 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

Office of the Secretary

National Food and Agriculture Council (Service Center Initiative); Notice of Request for Approval of Information Collection

AGENCY: Office of the Secretary, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Service Center Initiative's (SCI) intention to request approval for information collection. This information collection consists of a limited customer survey in support of project pilot development prior to national deployment. This support is part of the Service Center reorganization authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354)—the 1994 Act.

DATES: Comments on this notice must be received on or before February 28, 2000 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Dave McSween, Senior Financial Analyst, Business Case Team, Service Center Initiative, USDA, 5602 Sunnyside Avenue; Beltsville, MD 20505–5000; telephone (301) 504–7554; e-mail: dave__mcsween@soza.com; or facsimile (301) 504–4103.

SUPPLEMENTARY INFORMATION:

Title: Customer Feedback from USDA Service Center Initiative Pilot Sites.

OMB Control Number: Not assigned—this is a new request.

Expiration Date of Approval: Not assigned—this is a new request.

Abstract: This request is to conduct customer interviews as to the quality, effectiveness, and utility of piloted projects. The 1994 Act authorized the Secretary of Agriculture to reorganize the Department. Within the goals and priorities of the National Partnership for Reinventing Government, a business process reengineering initiative was begun. USDA Service Centers nationwide are the backbone for providing USDA programs to rural America. The Service Center agencies are: Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and Rural Development. Internal Department studies identified business processes and information technology at the Service Centers as having major deficiencies that impeded customer service. This Service Center Initiative (SCI) was formed to spearhead changes in service delivery.

Nine national pilot sites were selected to be the test sites for new processes. Criteria for selection of the pilot sites included diversity of geographic, production, program and customer factors to ensure the full range of USDA's customers, partners and programs were represented. The nine pilot sites are: Snow Hill, MD; Okeechobee, FL; Scottsburg, IN; Paola, KS; Abilene, TX; Sacramento, CA; The Dalles, OR; Rolla, ND and Los Lunas, NM. As a result of business area analysis, specific projects were chartered to test new ideas at the pilot sites prior to nationwide deployment. The evaluation of the projects is scheduled to include internal USDA process savings and customer benefits. The Service Centers exist to provide customer service. There is no substitute for the opportunity to speak with customers and receive their candid thoughts on how well a specific project did or did not meet their needs. Without this information, projects may be deployed to 2500 Service Centers nationwide that do not meet basic customer requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Service Center customers and partners.

Estimated Number of Respondents: 200.

Estimated number of responses per respondent: 1.0.

Estimated Total Annual Burden on Respondents: 400 hours.

Proposed topics for comment include: (a) whether the information to be collected is necessary for the proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the clarity, quality, and usefulness of the information to be collected; or (d) ways to minimize further the burden of information collection for those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC and to Dave McSween, Senior Financial Analyst, Business Case Team, Service Center Initiative, USDA, 5601 Sunnyside Avenue; Beltsville, MD 20705–5000; telephone (301) 504–7445; e-mail: dave__mcsween@soza.com; or facsimile (301) 504–4103.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on December 16, 1999.

Greg Carnill,

Executive Officer, National Food and Agriculture Council.

[FR Doc. 99–33510 Filed 12–27–99 8:45 am]

BILLING CODE 3510–VS–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–901–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved generic information collection for vegetables and specialty crops.

DATES: Comments on this notice must be received by February 28, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090-6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moabdocket__clerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone (202) 720-2491, Fax: (202) 720–5698, or E-mail: Jay.Gueber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Vegetable and Specialty Crop Marketing Orders.

OMB Number: 0581–0178.

Expiration Date of Approval: July 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The following marketing orders are covered under this information collection: Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, Marketing Order 945; Irish Potatoes Grown in Washington, Marketing Order 946; Irish Potatoes Grown on Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, Marketing Order 947; Irish Potatoes Grown in Colorado, Marketing Order 948; Irish Potatoes Grown in Southeastern States, Marketing Order 953; Vidalia Onions Grown in Georgia, Marketing Order 955; Sweet Onions Grown in the Walla Walla Valley of Southeastern Washington and Northeastern Oregon, Marketing Order 956; Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, Marketing Order 958; Onions Grown in South Texas, Marketing Order 959; Tomatoes Grown in Florida, Marketing Order 966; Melons Grown in South Texas, Marketing Order 979; Hazelnuts Grown in Oregon and Washington, Marketing Order 982; Walnuts Grown in California, Marketing Order 984; Domestic Dates Produced or Packed in Riverside County, California, Marketing Order 987; Raisins Produced from Grapes Grown in California, Marketing Order 989; and, Dried Prunes Produced in California, Marketing Order 993. Also included in this request are forms applicable to imported raisins, dates, and dried prunes. Marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee or board of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs. Under the Act, orders may authorize the following: production and marketing research including paid advertising, volume regulations, reserves including pools and producer allotments, container regulations, and quality control. Production and marketing research activities are paid for by assessments levied on handlers regulated under the marketing orders. Also pursuant to section 8e of the Act, importers of raisins, dates, and dried prunes are required to submit certain information.

Under the marketing orders, producers and handlers are nominated by their respective peers. These nominees then serve as representatives on their respective committees/boards and must file nomination forms with the Secretary.

Formal rulemaking amendments to the orders must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of these marketing order programs. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the respective orders whenever an order is amended.

The orders and their rules and regulations authorize the respective commodities' Committees/Boards, the agencies responsible for local administration of the orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The Committees/Boards have developed forms as a means for persons to file required information.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the AMAA as expressed in the orders, and the rules and regulations issued under the orders.

The information collected is used only by authorized employees of the committees/boards and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff. Authorized committee/board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.07718 hours per response.

Respondents: Producers, handlers, processors and importers.

Estimated Number of Respondents: 17,463.

Estimated Number of Responses per Respondent: 6.72508.

Estimated Total Annual Burden on Respondents: 9,064 hours.

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 will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments should reference this docket number and the appropriate marketing order, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket__clerk@usda.gov. Comments should also reference the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Avenue, S.W., Washington, D.C., room 2525–South Building.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will become a matter of public record.

Dated: December 21, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33641 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a tele conference meeting on January 6, 2000. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 13, 2000, beginning at 2 p.m. and ending at 3 p.m.

ADDRESSES: The meeting will be held via tele conference. To access this call please follow instructions: You must have a touch tone phone. Dial 1 (888) 769–8514 at the tone please give the password number 13885.

FOR FURTHER INFORMATION CONTACT: Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: [1] Watershed Assessment Recommendations. [2] Public comments. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to obtain tele conference information. Issues may be brought to the attention of the Committee during the open public comment period during the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 20, 1999.

Edmund Gee,

Acting Forest Supervisor.

[FR Doc. 99–33561 Filed 12–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[Docket No. 990114014–9317–02]

RIN: 0605–XX05

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of amendment of privacy act system of records; commerce/patent and trademark system 14.

SUMMARY: The Department of Commerce is amending the system of records listed under Commerce-Patent and Trademark System 14: User of Public Search Room of the Patent and Trademark Office. This action has been taken to update the user pass system privacy act notice. We invite public comment on the proposed changes announced in this publication.

DATES: *Effective Date:* The amendments will become effective as proposed January 27, 2000.

Comment Date: To be considered, written comments must be submitted on or before January 27, 2000.

ADDRESSES: Comments may be sent via United States Mail delivery to Nancy Slutter, Office of the Solicitor, United States Patent and Trademark Office, Box 8, Washington, DC 20231; or via facsimile at 703–305–9373. All comments received will be available for public inspection at the Public Search Facilities, Crystal Plaza 3, 2021 South Clark Place, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Nancy Slutter, Office of the Solicitor, Box 8, Washington, DC 20231, 703–305–9035.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office (PTO) will modify its current user pass system for persons using the Public Search Facilities and other offices at the PTO. The user pass system will be modified from a system that is currently collected on paper to a system that stores records electronically. The PTO maintains numerous search facilities for the use of members of the public. Patent applications are available to applicants and their designees and all trademark files are available to the public. Additionally, application files for issued United States patents are available for inspection and duplication at the PTO. Thus, members of the public have a need to access certain areas of the PTO facilities. The PTO has become aware of problems associated with improper use, removal, loss, or theft of application files and other PTO property and, therefore, plans to modernize its user pass system to better preserve its resources. Additionally, the user pass system will help the PTO understand the public's use of PTO facilities and allocate sufficient resources to serve the public.

On January 6, 1998, the PTO issued a notice in its Official Gazette notifying the public that updated identification passes would be issued to public users of the PTO search facilities. On October 22, 1997, the PTO held a public hearing concerning the public's access to application files. Members of the public submitted a number of written comments concerning access to application files. All commenters objected to a proposal that would have restricted access to the application files. Four additional commenters, while expressing concern at the proposal to restrict access, praised the PTO for efforts to implement procedures to assure the integrity of the application files.

Application files are critically important to understanding the metes and bounds of the intellectual property grants that the Commissioner of Patents and Trademarks issues. See, *e.g.*, Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 117 S.Ct. 1040, 1049–50 (1997) (discussing prosecution history estoppel). Moreover, Congress has mandated that the PTO keep and preserve all records pertaining to patents and trademark registrations. 35 U.S.C. 1.

Changes being made to update PAT/TM–14 include amendments to the system name, categories of records in the system, policies and practices for storing records, and addresses. The system name is being amended to reflect that this system encompasses all public facilities at the Patent and Trademark Office, not just the Public Search Room as the system is currently named. The categories of records in the system is being amended: (i) To clarify that the PTO may collect addresses, including business, home and/or electronic mail addresses—the current notice merely lists home addresses; (ii) to include telephone numbers—the current system does not mention telephone numbers; (iii) to include a photograph—the current system does not mention photographs; (iv) to include record of use—the current system does not mention record of use; (v) to include government-issued identification cards and information contained therein—the current system does not mention

government-issued identification cards; and, (vi) to include other information as needed to establish identity—the current system does not mention other information to establish identity. The PTO will collect this information to confirm identity of public users checking out application files or other material or using the public facilities. The policies and practices for storing and retrieving the information in this system are being amended to reflect electronic storage compared with the current paper storage system. The system manager and notification procedure are being amended merely to update correct addresses for those positions.

The Department of Commerce finds no probable or potential affect of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, the PTO has located paper records in lockable file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

Accordingly, the Users of Public Search Room of the Patent and Trademark Office originally published at 42 FR 32340, June 24, 1977 is amended by the following updates:

Commerce/PAT–TM–14

SYSTEM NAME:

Users of Public Facilities of the Patent and Trademark Office.

SYSTEM LOCATION: *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: *

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; addresses; telephone numbers; business firm or other organizations with which affiliated; user pass number; user photograph; registration number, if a registered practitioner before the Patent and Trademark Office; record of use; violations of policies governing use of the search facilities and other office areas; signature of recipients of user passes; government-issued identification card and information contained therein; and, other information as needed to establish identity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage.

RETRIEVABILITY:

Alphabetically by name and sequentially by user pass number. Also, electronic sort by data element.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL: *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Search Services Division, U.S. Patent and Trademark Office, Washington, DC 20231.

NOTIFICATION PROCEDURE:

Information may be obtained from: Privacy Officer, Office of the Solicitor, U.S. Patent and Trademark Office, Box 8, Washington, DC 20231. Requesters should provide name, signature, address, date of visit, and record sought in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

* No changes are being made.

Dated: December 14, 1999.

Brenda Dolan,

Freedom of Information/Privacy Act Officer, Department of Commerce.

[FR Doc. 99–33578 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 991215341–9341–01]

RIN Number 0607–XX50

Survey of Pollution Abatement Costs and Expenditures

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census (Census Bureau) is considering a proposal to conduct the Pollution Abatement Costs and Expenditures survey for the year 1999. The Census Bureau, prior to 1995, conducted the Pollution Abatement Costs and Expenditures Survey, MA–200. Due to budget limitations, the survey was suspended. In response to the need for this data to assess the cost of environmental regulations on private business, the Census Bureau, with support from the Environmental Protection Agency, plans to reinstate the Survey of Pollution Abatement Costs and Expenditures.

DATE: Written comments must be submitted on or before January 27, 2000.

ADDRESS: Direct all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, Manufacturing and Construction Division, Bureau of the Census, Room 2135, Federal Building 4, Washington, DC 20233, on (301) 457–4683.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code, Sections 182, 224, and 225. The Pollution Abatement Costs and Expenditures survey will provide continuing and timely national statistical data for the period between the economic censuses. The next Economic Census will occur in the year 2002. Data collected in this survey will be within the general scope, type, and character of those inquiries covered in the Economic Census.

The survey form will collect—from plants that produce goods or provide services classified in manufacturing, mining, and electric utility industries—data on the operating costs of pollution prevention and treatment, including hazardous pollutants, payments to government agencies for pollution removal, and new capital expenditures for pollution prevention and treatment (such as for air pollution control, water pollution control and solid waste). These data are similar to the data collected on the previously mentioned MA–200. The survey results will be used to track costs of regulatory programs and rules. Results will also be used for monitoring economic impact and promoting growth of environmental programs.

The Bureau of the Census will use mail-out/mail-back survey forms to collect the data. Companies will be asked to respond to the survey within 60 days of the initial mailing. Letters encouraging participation will be mailed to companies that have not

responded by the designated time. Resulting statistics will be published in the Current Industrial Reports series.

The primary users of these data will be federal, state, and local government agencies, including the Bureau of the Census, the Environmental Protection Agency, and the Bureau of Economic Analysis. Other users include business firms, academics, trade associations, and research and consulting organizations. The data are not publicly available from nongovernmental or other governmental sources on a timely and continuing basis.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, we will submit the survey to OMB for approval. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Dated: December 21, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–33602 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 65–99]

Proposed Foreign-Trade Zone—Victorville, CA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Southern California Logistics Airport Authority (a California public corporation), to establish a general-purpose foreign-trade zone in Victorville, California. The U.S. Customs Service has designated the Southern California Logistics Airport as a Customs user fee airport. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 16, 1999. The applicant is authorized to make the proposal under section 6302 of the California Code.

The proposed zone site (1,954 acres) is located at the Southern California Logistics Airport complex (the former George Air Force Base), 18374 Readiness Street, Victorville. The site includes air cargo and intermodal transfer facilities. The U.S. Air Force is in the process of transferring the facility to the applicant, which will operate the commercial airport complex, as well as the foreign-trade zone.

The application indicates a need for foreign-trade zone services in the Victorville/east central San Bernardino County region. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

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.

As part of the investigation, the Commerce examiner will hold a public hearing on February 3, 2000, 10 a.m., at the Victorville City Hall Council Chambers, 14343 Civic Drive, Victorville, California 92392.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 18, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 6, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Victorville Public Library, 15011 Circle Drive, Victorville, California 92392.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: December 20, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33663 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1066]

Expansion of Foreign-Trade Zone 126, Reno, NV

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Economic Development Authority of Western Nevada, grantee of Foreign Trade Zone 126, submitted an application to the Board for authority to expand FTZ 126 to include four sites (7,484 acres) in the Reno, Nevada, area, within the Reno customs port of entry (FTZ Docket 40–98; filed August 17, 1998 amended June 9, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 45998, August 28, 1998) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application, as amended, to expand FTZ 126 is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to a five-year time limit (to October 31, 2004) and subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33658 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1067]

Expansion of Foreign-Trade Zone 49, Newark/Elizabeth, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18,

1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, submitted an application to the Board for authority to expand FTZ 49 to include the jet fuel storage and distribution system at Newark International Airport (40 acres) in the Cities of Newark and Elizabeth, New Jersey (Site 5), within the New York/Newark Customs port of entry (FTZ Docket 11–99; filed 3/18/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 14860, March 29, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 49 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33659 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1070]

Expansion of Foreign-Trade Zone 46, Cincinnati, OH, Area Approval of Manufacturing Activity Within FTZ 46 Milacron, Inc.; (Plastics Processing Machinery)

Pursuant to its authority under the Foreign-Trade Zones Act (the Act) of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, The Greater Cincinnati Foreign Trade Zone, Inc. (GCFTZ), grantee of FTZ 46, submitted an application to the Board for authority to expand FTZ 46 to include three sites located in Brown and Clermont Counties within the Cincinnati, Ohio, area, and for authority, on behalf of Milacron, Inc., to manufacture plastics processing machinery and related parts under FTZ procedures within FTZ 46 (FTZ Doc. 30–99, filed June 3, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 32023, June 15, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby authorizes the grantee to expand its zone as requested in the application, and approves the request for manufacturing authority, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33662 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1068]

Expansion of Foreign-Trade Subzone 183A Dell Computer Corp. (Computer Products), Austin, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, submitted an application to the Board for authority to expand Subzone 183A at the Dell Computer Corporation facilities (computer products manufacturing) to include an additional site (Site 6) for expanded manufacturing and distribution activities, located at the Walnut Creek Corporate Center in Austin, Texas, within the Austin Customs port of entry (FTZ Docket 32–99; filed June 21, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 35124, June 30, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand Subzone 183A is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33660 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1069]

Approval for Extension of Authority of Board Order 732; Foreign-Trade Subzone 149A BASF Corp. (Caprolactam Extract, Cyclohexanone), Freeport, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (The Board) adopts the following Order:

Whereas, Subzone 149A was approved by the Board with authority to manufacture polycaprolactam and its related chemical precursors (caprolactam extract and cyclohexanone) under FTZ procedures up to a combined level of 45 million kilograms annually (Board Order 732 60 FR 15903, March 28, 1995), subject to the following conditions: (1) Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that nonprivileged foreign (NPF) status may be elected for foreign caprolactam extract (HTSUS 2933.71.0000) and cyclohexanone (2914.22.1000); and, (2) the authority with regard to the NPF option is initially granted until December 31, 1999, subject to extension.

Whereas, BASF Corporation, operator of FTZ Subzone 149A, located in

Freeport, Texas, has required an extension (to December 31, 2003) of authority for the NPF option of Board Order 732 (FTZ Doc. 10–99, filed March 17, 1999);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 14689, March 26, 1999);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request is in the public interest;

Now therefore, the Board hereby approves the request subject the FTZ Act and the Board's regulations, including § 400.28, and further subject to the other condition (Condition #1) of Board Order 732.

Signed at Washington, DC, this 15th day of December 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–33661 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2000.

Antidumping duty proceedings	Periods to be reviewed
Mexico:	
Circular Welded Non-Alloy Steel Pipe	
A–201–805	
Hylsa, S.A. de C.V., Tuberia Nacional, S.A. de C.V	11/1/98–10/31/99
Republic of Korea:	
Circular Welded Non-Alloy Steel Pipe	
A–580–809	
Dongbu Steel Co., Ltd., Hyundai Pipe Co., Ltd., Korea Iron and Steel Co., Shinho Steel Co., SeAH Steel Corporation, Union Steel Manufacturing Co., Ltd	11/1/98–10/31/99
Taiwan:	
Collated Roofing Nails	
A–583–826	
Dinsen Fastening System, Inc	11/1/98–10/31/99
The People's Republic of China:	
Fresh Garlic*	
A–570–831	
Fook Huat Tong Kee Pte., Ltd., Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., Zhejiang Materials Industry, Wo Hing (H.K.) Trading Co	11/1/98–10/31/99
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
The Ukraine:	
Silicomanganese	
A–823–805	11/1/98–10/31/99

*If one of the above named companies does not qualify for a separate rate, all other exporters of fresh garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a

determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer this is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of the Department's Regulations to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 21, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–33657 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–009

Industrial Nitrocellulose From France; Notice of Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 15, 1999, the Department of Commerce published in the **Federal Register** (64 FR 50107) the notice of initiation of the administrative review of the antidumping duty order on industrial nitrocellulose from France. This review covers the period August 1, 1998, through July 31, 1999. As a result of the withdrawal of the sole request for a review, the Department has now rescinded this administrative review.

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

The Department published in the **Federal Register** on August 11, 1999 (64 FR 43649), a ''Notice of Opportunity to Request Administrative Review'' of the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). On August 31, 1999, Bergerac, N.C., the respondent in this proceeding, requested an administrative review of the order covering industrial nitrocellulose from France for the review period August 1, 1998, through July 31, 1999. The Department published the notice of initiation of this administrative review in the **Federal Register** on September 15, 1999 (64 FR 50107).

On October 6, 1999, Bergerac, N.C., withdrew its request for a review. Because there were no other requests for review of Bergerac, N.C., we are rescinding this review covering shipments of subject merchandise from France during the period August 1, 1998, through July 31, 1999. The cash-deposit rate for Bergerac, N.C., will remain 13.35 percent, which is the rate established in the most recently completed segment of this proceeding (63 FR 49085, September 14, 1998).

This notice rescinding the administrative review is in accordance with section 777(i) of the Act and 19 CFR 351.213(d).

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–33655 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded ASTM A–312 Stainless Steel Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe (WSSP) from Korea in response to a request by Avesta Sheffield Pipe Co.; Damascus Tube Division, Damascus-Bishop Tube Co.; and the United Steelworkers of America (AFL–CIO/CLC), herein referred to as ''the domestic industry.'' This review covers exports of subject merchandise to the United States during the period December 1, 1997, through November 30, 1998.

We have preliminarily determined that SeAH Steel Corporation Ltd. (SeAH) has made sales below normal value (NV). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the constructed export price (CEP) and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment a statement of the issue and a brief summary of the comment.

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, Mark Hoadley, or Maureen Flannery, 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) 482–0648, (202) 482–0666, and (202) 482–3020, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise stated, 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. In addition, unless otherwise stated, all

citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on WSSP from Korea on December 30, 1992 (57 FR 62301). On December 8, 1998, we published in the **Federal Register** (63 FR 67646) a notice of opportunity to request an administrative review of the antidumping duty order on WSSP from Korea covering the period December 1, 1998 through November 30, 1999.

In accordance with 19 CFR 351.213(b)(1), the domestic parties requested that we conduct an administrative review of SeAH's sales. We published a notice of initiation of this antidumping duty administrative review on January 25, 1999 (64 FR 36821).

During this review, the Department conducted a verification of the information provided by SeAH from November 11, 1999 through November 13, 1999. We used standard verification procedures, including the examination of relevant sales and financial records. Our verification results for SeAH are outlined in business proprietary and public versions of the verification reports on file with the Central Records Unit, in Room B–099 of the Herbert C. Hoover Building.

Scope of the Review

The merchandise subject to this administrative review, WSSP, is austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of these products are currently classifiable under the following United States Harmonized Tariff Schedule (HTS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060 and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this order is limited to welded austenitic stainless steel pipes.

Although HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by SeAH covered by the description in the ''Scope of Review'' section, above, and sold in the home market during the period of review (POR) to be foreign like products for the purposes of determining appropriate product comparisons with U.S. sales. In the Product Characteristics section (B3.1–B3.n and C3.1–C3.n) of our questionnaire, we provided the following hierarchy of product characteristics to be used for reporting identical and most similar comparisons of merchandise: (1) Specification/Alloy; (2) Size; (3) Hot or Cold Finish; (4) Wall Thickness; (5) End Finish; (6) Pipe Length; and (7) Other Characteristics.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the CEP to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average home market prices for NV and compared these to individual U.S. transaction prices.

United States Price

Because SeAH and Pusan Pipe of America (PPA) are affiliated, and the subject merchandise was not sold to an unaffiliated purchaser until after its importation into the United States, we used CEP as United States Price. The starting price for CEP is the price from PPA to unaffiliated customers in the United States.

The Department calculated CEP for SeAH based on the ''ex port duty paid'' (net of discounts) price to PPA's customer in the United States. In accordance with section 772(c)(2) of the Act, we reduced CEP by movement expenses (foreign inland freight, foreign brokerage, ocean freight, marine insurance, U.S. brokerage, and U.S. duties). In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses (credit and warranty expenses) and indirect selling expenses, including inventory carrying costs. Finally, we added Korean duty drawback and made an adjustment for an amount of profit allocated to selling expenses incurred in the United States, in accordance with section 772(c) and (d) of the Act.

Date of Sale

Under the Department's current practice, the invoice date is normally the date of sale. We may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *Preamble to the Antidumping Duty Regs.,* 62 FR at 27411.

SeAH reported PPA's date of invoice as its U.S. date of sale. The domestic industry argued that the Department should deny SeAH's reported date of sale. The domestic industry asserts that both price and quantity are established before the date that PPA issues its invoice and that PPA is ''not responsible for the establishment of the terms of sale.''

After examination of SeAH's and PPA's respective roles in sales process, we determined that one of the material terms (*i.e.* quantity) of SeAH's sales to unaffiliated customers are not fixed until PPA's invoice date. Thus, we used the date of PPA's invoice to its unaffiliated customer as the date of sale.

Because most of the information on which we relied to perform our analysis is proprietary, it cannot be discussed in this notice. However, a memorandum detailing our analysis has been prepared. (See the proprietary version of the Memo from Thomas Gilgunn to Barbara E. Tillman regarding ''Date of Sale for SeAH Steel Corporation and Pusan Pipe America'' (Decision Memo), dated December 17, 1999.)

Normal Value

The Department determines the viability of the home market as the comparison market by comparing the aggregate quantity of home market and U.S. sales. We found that SeAH's quantity of sales in its home market exceeded five percent of its sales to the United States. We therefore have determined that SeAH's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C) of the Act and section 351.404 of our regulations. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price, net of discounts, at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP sales. *See* the ''Level of

Trade section'' below. We determined what home market merchandise was most similar to the merchandise sold in the United States on the basis of product characteristics set forth in sections B and C of the Department's questionnaire.

For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses (credit expenses) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, where applicable, for movement expenses, in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act, and, based upon our level of trade analysis, discussed below, for home market indirect selling expenses up to the amount of U.S. indirect selling expenses, in accordance with section 773(a)(7)(B) of the Act and section 351.412(f) of the Department's regulations. *See Analysis Memorandum* (December 17, 1999).

Cost of Production

In the last completed segment of this proceeding, the Department disregarded sales below the cost of production (COP). *See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From The Republic of Korea,* 57 FR 53693, (November 12, 1992). We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales in the home market. Using market sales and COP information provided by the respondent, we compared sales of the foreign like product in the comparison market with the model-specific COP figure for the POR. 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 selling, general and administrative (SG&A) expenses, including all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment.

After calculating COP, we tested whether comparison market sales of the foreign like product were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared to the POR-long average COP, any sales that were below cost were also determined not to be at prices which permitted cost recovery within a reasonable period of time. We compared model-specific COPs to the reported comparison market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model during the POR were at prices less than the weighted-average COPs for the POR, we disregarded the below-cost sales because they were made over an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

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 above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative expenses (SG&A), and profit. 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 the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market 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 home market at the same level of trade (LOT) as U.S. sales. The NV LOT is the level of the starting-price sale in the home market or, when NV is based on constructed value, the level of the sales from which we derive selling, general, and administrative expenses (SG&A) and profit. For export price, the U.S. LOT 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. To determine whether NV sales are at a different LOT than export price or CEP, 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 LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

For merchandise sold in the home market during this POR, SeAH claimed two distribution channels and one LOT. Regardless of the distribution channel, the selling functions performed by SeAH were substantially the same. Therefore, we concluded all sales in the home market were made at one LOT. Further, because all U.S. sales were CEP sales made in the same distribution channel and SeAH performed the same selling functions for all customers, we concluded that all sales in the U.S. market were made at one LOT.

We then compared the selling functions in the U.S. and home markets. At the level of CEP sales to the United States, *i.e.,* after eliminating from consideration the selling functions associated with deductions made under section 772 of the Act, we found that the CEP sales were made at a different and less advanced level of trade than home market sales.

Because there are no sales in the home market made at the same LOT as sales in the United States, we were not able to determine whether the difference in LOT affects price comparability. Therefore, we made a CEP offset adjustment. In accordance with 19 CFR 351.412(f)(2), we deducted indirect selling expenses from NV to the extent of U.S. indirect selling expenses deducted in calculating CEP. For a further discussion of the Department's

LOT analysis with respect to SeAH, see *Analysis Memorandum* (December 17, 1999).

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a ''fluctuation'' to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. 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 generally substitute the benchmark rate for the daily rate, in accordance with established practice. (An exception to this rule is described below.) (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Our analysis of the U.S. dollar/Korean won exchange rates demonstrates that the Korean won declined rapidly in November and December 1997. Specifically, the won declined more than 40 percent over this two-month period. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during recent years, and it did not rebound significantly in a short time. As such, we determine that the decline in the won during November and December 1997 was of such magnitude that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.,* as having experienced only a momentary drop in value relative to the normal benchmark. Accordingly, the Department used actual daily exchange rates exclusively in November and December 1997. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from the Republic of Korea,* 64 FR 30664, 30670 (June 8, 1999) (''*SSSS from Korea*''). We note, however, that we have refined our methodology somewhat from that applied in *SSSS from Korea.* We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in November and December 1997. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates, more than 2.25 percent from the benchmark, were merely fluctuating. Following the precipitous drop in November and December 1997, we continued to use only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time. Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 64 FR 56759, 56763 (October 21, 1999). *See also Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part,* 64 FR 62648, 62649 (November 17, 1999).

Applying this methodology in the instant case, we used daily rates from November 3, 1997, through January 13, 1998. We then resumed the use of our normal methodology, starting with a benchmark based on the average of the 20 reported daily rates from January 14, 1998. We used the normal 40-day benchmark from February 12, 1998 to the close of the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period December 1, 1997 through November 30, 1998 to be as follows:

Manufacturer/exporter	Margin percentage
SeAH	2.44

The Department will disclose to the parties to the proceeding calculations performed in connection with these preliminary results of review within five days after the date of publication of these preliminary results of review.

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 2 days after the date of filing of rebuttal briefs or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing of case briefs. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.202(b), we calculated an importer-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of review (except that no deposit will be required for firms with *de minimis* margins, *i.e.,* margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the less than fair value (LTFV) investigation or a previous review, 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 previous review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate established in the LTFV investigation, which was 6.83 percent. 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 and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C 1677f(i)(1)).

Dated: December 17, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33654 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–030. Applicant: University of Massachusetts, Biology Department, Morrill Science Center, Amherst, MA 01003-5810. Instrument: Electron Microscope, Model Tecnai 12. Manufacturer: FEU Company, The Netherlands. Intended Use: The instrument is intended to be used to view the end products of experiments, including immunolabeling of specific proteins, properties of genetically altered organisms and protein complexes under different ionic conditions. The specific research objectives vary widely but all aim to generate basic information about organisms, cells or subcellular components. In addition, the instrument will be used to demonstrate transmission electron microscopy for several courses, including Biology 523 (Histology) and Biotechnology. Application accepted by Commissioner of Customs: December 6, 1999.

Docket Number: 99–031. Applicant: University of Vermont, Department of Surgery, Given E–305, Burlington, VT 05405. Instrument: HVS Video Tracking System, Pool and Platform, Model 2020. Manufacturer: HVS Image Ltd., United Kingdom. Intended Use: The instrument is intended to be used for the study of multiple minor head injuries using a rat model in order to provide information that may be helpful in understanding why there are anecdotes in the human population of poor outcomes after seemingly minor recurrent head injuries. Application accepted by Commissioner of Customs: December 6, 1999.

Docket Number: 99–032. Applicant: University of California, Los Alamos National Laboratory, BUS–6, P.O. Box 1663, MS C308, Los Alamos, NM 87545. Instrument: Solid State Quantum Computer, Model Multiprobe S. Manufacturer: Omicron Vakuum Physik GmbH, Germany. Intended Use: The first scaleable solid state quantum computer will be used to produce an array of atoms on a Si (001) surface. The work requires using a scanning tunneling microscope for the precise placement in individual atoms of phosphorus in an array with 20 nanometer spacing on an atomically cleaned silicon substrate surface. The work also includes studying the stability and properties of such a structure at different temperatures. This investigation will also include work that will determine the best phosphorus bearing chemical species to use in this application. A silicon overlayer will bury this array. Electric contact gates will be positioned on top of the overlayer over the phosphorus sites.

Application accepted by Commissioner of Customs: December 8, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–33656 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122299A]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Large Pelagic Fishing Survey.

Agency Form Number: None.

OMB Approval Number: 0648–0380.

Type of Request: Revision of a currently approved collection.

Burden Hours: 5,032 hours.

Number of Respondents: 20,000 (multiple responses).

Average Hours Per Response: Ranges between 2 and 15 minutes depending on the requirement.

Needs and Uses: The Large Pelagic Fishing survey consists of dockside and telephone surveys of recreational anglers for large pelagic fish (tunas, sharks, and billfish) in the Atlantic Ocean. The survey provides the National Marine Fisheries Service with information to monitor catch of bluefin tuna and marlin. Catch monitoring in these fisheries and collection of catch and effort statistics for all pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected is essential for the U.S. meet its reporting obligations to the International Commission for the Conservation of Atlantic Tuna.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion, weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW., Washington, D.C. 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, D.C. 20503.

Dated: December 17, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33666 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program management and evaluation, national strategic investments, education and extension, technology programs, legislative changes and other matters as described below:

DATES: The announced meeting is scheduled during two days: Thursday, January 13, 8:30 a.m. to 5:30 p.m.; Friday, January 14, 8 a.m. to 12 noon.

ADDRESSES: National Oceanic and Atmospheric Administration, Silver Spring Metro Center III, 1315 East-West Highway, Room 4527, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (P.L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce, the Under Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to the them for review and advice. The agenda for the meeting is as follows:

Thursday, January 13, 2000

8:30 a.m. Welcoming and Opening Formalities
8:45 a.m. Sea Grant Leadership Meeting Report
9:15 a.m. Executive Committee Report
10 a.m. Sea Grant Review Panel Subcommittee Reports
10:45 a.m. Break
11 a.m. Historically Black and Minority Serving Institutions Program Report
11:30 a.m. National Extension Review
12:15 p.m. Lunch
1 p.m. Science Presentation
1:45 p.m. Congressional Update
2:30 p.m. Sea Grant Association Report
3 p.m. Break
3:15 p.m. NOAA and OAR Update
4 p.m. National Sea Grant Office Update
5:30 p.m. Adjourn

Friday, January 14, 2000

8:30 a.m. NOAA Science Advisory Board
9:15 a.m. Sea Grant Regional Approaches
10 a.m. Program Evaluation
10:30 a.m. Break
10:45 a.m. Critical Sea Grant Issues
11:45 a.m. Wrap-up
12 noon Adjourn

This meeting will be open to the public.

Dated: December 20, 1999.

Louisa Koch,

Deputy Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 99–33573 Filed 12–27–99; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 7, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33753 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 28, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33754 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 21, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33755 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 14, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–33756 Filed 12–23–99; 11:50 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its National Senior Service Corps Project Progress Report (OMB Control Number 3045–0033, with an expiration date of 12/31/99). The Corporation has submitted an extension request to OMB to allow for the continued use of this report during the public comment period and the OMB review. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 28, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Peter L. Boynton, Program Officer, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Peter Boynton, (202) 606–5000, ext. 499.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The Progress Report (PPR) was designed to assure that National Service Corps (NSSC) grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Current Action

The Corporation seeks to revise the current PPR: a.) in order to reflect and mirror the revised regulations for the Retired and Senior Volunteer, Foster Grandparent, and Senior Companion Programs, contained in 45 CFR parts 2551, 2552, and 2553, published in the **Federal Register** on March 24, 1999, and b.) to eliminate current use of the PPR for collection of Government Performance and Results Act (GPRA) performance data. The Corporation anticipates making available to all NSSC grantees an OMB approved revised PPR by July of 2000. Pending OMB approval, the GPRA data will be collected annually as of September 30 and submitted by December 1, through separate reporting.

The revised PPR will be used by NSSC grantees to report progress toward accomplishing work plan goals and objectives, meeting challenges encountered, describing significant activities, and requesting technical assistance. Submission requirements are proposed to be revised as follows, which will have the effect of reducing the reporting burden on many grantees that currently report semi-annually:

Established multi-year NSSC grantees will submit the complete report annually within 30 days of the end of their annual budget cycle.

New projects in their first year, new components of statewide projects, demonstrations, and projects experiencing problems or with substantial project revisions will submit the PPR quarterly. One year grantees will submit the PPR semi-annually.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: National Senior Services Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,300.

Frequency: Annual, with exceptions. It is estimated that 700 will respond annually, 500 semi-annually, and 100 quarterly.

Average Time Per Response: 9.7 hours.

Estimated Total Burden Hours: 12,550 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,599.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 21, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33551 Filed 12–27–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service. (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial

resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning a new procedure for collecting data for reporting Government Performance and Results Act (GPRA) to Congress through a new National Senior Service Corps (NSSC) Reporting Form. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 28, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Peter L. Boynton, Program Officer, 1201 New York Avenue, N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Peter Boynton, (202) 606–5000, ext. 499.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Background

Currently, data required for reporting under the GPRA is collected as Section I of the Project Progress Report (PPR), CNCS Form 1020. Most NSSC grantees submit a PPR semi-annually to their agency project manager. New sponsors or components of statewide projects, demonstrations and projects experiencing problems or with substantial project revisions submit the PPR quarterly. The date of submission for each grantee is tied to the end-date of their budget period. These end-dates, and the resultant submissions, vary throughout the year among grantees.

Experience with managing GPRA data reporting since the last PPR revision in 1998 has led the Corporation to seek approval from the Office of Management and Budget (OMB) for removing the GPRA reporting section (current Section I) from the PPR form, and for a new form and procedure for reporting only GPRA data as of a fixed date each year.

Current Action

The Corporation is seeking approval for a new form for all grantees of the NSSC to report GPRA data annually as of a single date. The data to be reported on this form is currently reported by most grantees semi-annually on CNCS Form 1020, Project Progress Report (OMB Control Number 3045–0033). A small percentage are required to submit the PPR quarterly. Pending OMB approval, the GPRA reporting data will be deleted from the Project Progress Report as of July 31, 2000. The new NSSC GPRA Reporting Form, if approved, will be filed by all grantees by December 1 each year, containing data with a timeperiod of Oct 1 through September 30.

Having all grantees, regardless of their grant budget cycle, report annually as of September 30 will reduce the reporting burden for GPRA data for grantees who currently report this data semi-annually or quarterly. It will also enable the Corporation to submit current, consistent, and reliable aggregate GPRA reporting data to Congress by the date established by law, February 28th of each year.

Type of Review: New information collection.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps GPRA Reporting Form.

OMB Number: None.

Agency Number: None.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,300.

Frequency: Annual.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: 1,300 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $494.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 21, 1999

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33553 Filed 12–27–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35)). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, 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**.

The 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 Corporation, 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;

• Propose ways to enhance the quality, utility and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information to those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Part I

Description: The 2000 Application Guidelines for Learn and Serve America Higher Education provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for college-age youth. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page and one budget form that all Higher Education applicants can use. Form instructions are clearer and are written in plain language. Questions that need response in the narrative section of the application are streamlined.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for Learn and Serve America Higher Education.

OMB Number: 3045–0046.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 400.

Frequency: Once per year.

Average Time Per Response: Six (6) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II

Description: The 2000 Application Guidelines for Learn and Serve America School-and Community-Based Programs provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for school-age youth. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page that all Learn and Serve America School and Community-Based Program applicants can use. Forms and form instructions are clearer and are written in plain language. Questions that need response in the narrative section of the application are streamlined.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for Learn and Serve America School and Community-Based Programs.

OMB Number: 3045–0045.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 225.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 2,250 hrs.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 21, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33552 Filed 12–27–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Electronic Combat Integrated Test Quick Look Panel members will meet at Edwards Air Force Base (AFB), CA on January 18–19, 2000 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–33605 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel Chairs will meet at ANSER Corporation, Rosslyn, VA, on February 17–18, 2000 from 8 a.m. to 5 p.m.

The purpose of the meeting is to review the results of the Fiscal Year (FY) 2000 Reviews of the Air Force Science & Technology Program. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–33606 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

United States Army School of the Americas (USARSA), Training and Doctrine Command (TRADOC); Notice of Meeting

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: USARSA Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: 1–3 February 2000.

Place: USARSA, Building 35, Fort Benning, Georgia.

Time of Meeting: 0830–1630 on 1 and 2 February, 0830–1300 on 3 February 2000.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to LTC Joseph Contarino III, Designated Federal Official, U.S. Army School of

the Americas, ATTN: ATZB–SAZ–CS, Fort Benning, GA 31905–6245.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Presentation by Commanding General, TRADOC, issues from the previous meeting, and USARSA's reorganization.

1. Purpose of Meeting. This is the seventh USARSA Subcommittee meeting. The Subcommittee will receive a report from the Commander, TRADOC, and discuss the reorganization of USARSA.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Committee Management Office in writing at least five days prior to the meeting date of their intent to attend.

3. Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the subcommittee chairman may allow public presentations of oral statements at the meeting.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–33608 Filed 12–27–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Available Surplus Real Property at Fort Dix (Walson Army Hospital), Located at Fort Dix, Burlington County, NJ

AGENCY: U.S. Army Corps of Engineers, New York District.

ACTION: Notice.

SUMMARY: 32 CFR Part 176.20. This notice identifies the surplus real property located at Fort Dix (Walson Army Hospital), Burlington County, New Jersey. Fort Dix is located approximately eight (8) miles from the New Jersey Turnpike Exit 7 via Route 68.

FOR FURTHER INFORMATION CONTACT: Additional information regarding Walson Army Hospital (i.e., floor plans, existing utilities, etc.), contact Mr. John Warrick or Mrs. Jean Johnson, Regional Directorate of Public Works, ATTN: AFRC–FA–PWB–M, Real Property Office, 5318 Delaware Avenue, Fort Dix, New Jersey 08640–5506—(609)562–3253/4249; or Mr. Randy Williams, U.S. Army Corps of Engineers, New York District, Real Estate Division, ATTN: CENAN–RE–M/BRAC, 26 Federal Plaza, Room 1951, New York, NY 10278–0090, Telephone—(212) 264–5975, fax (212) 264–0230.

SUPPLEMENTARY INFORMATION: This surplus real property is available under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. Anthony R. Mazzella, Director, State of New Jersey, Department of the Treasury, Division of Property Management and Construction, P.O. Box 229, Trenton, New Jersey 08625–0229.

The surplus real property totals 24 acres, more or less. Hospital facility (PO5250) encompasses 384,057–sq. ft.; steel reinforced masonry with brick vainer exterior, built 1960. Support facilities include heating and air conditioning plants. The Air Force currently uses the facility as a hospital; however, the future uses depend on the degree of renovation.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–33607 Filed 12–27–99; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., February 8, 2000.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—November 2, 1999
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: December 20, 1999.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33686 Filed 12–22–99; 4:35 pm]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before January 27, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 21, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Eisenhower Regional Mathematics and Science Education Consortia Program.

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 1,200.

Abstract: Applications are required to receive grants under the Eisenhower Consortia Program. Program participants include LEAs, SEAs, and other public and private agencies, organizations, and institutions.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33542 Filed 12–27–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award Federal Financial Assistance (cooperative agreements) for the program entitled ''Ultra-Clean Transporation Fuels.'' Awards will be made to a limited number of applicants based on an evaluation of the technical merit of the proposed technology, probable reducibility to practice, formulation and organization of the project plan, technical and management capabilities, and availability of DOE funding.

FOR FURTHER INFORMATION CONTACT: David L. Hunter, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–107, Pittsburgh PA 15236–0940, Telephone: (412) 386–4872, FAX: (412) 386–6039, E-mail: hunter@netl.doe.gov. This solicitation (available in both WordPerfect 6.1 and Portable Document Format [PDF]) was released on DOE's NETL Internet site (http://www.netl.doe.gov/business) on December 17, 1999.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: ''Ultra-Clean Transportation Fuels.''

Objectives: Through Program Solicitation No. DE-PS26–00FT40758, the DOE's National Energy Technology Laboratory, in cooperation with the DOE's National Petroleum Technology Office, seeks applications for research and development that will lead to the production of ultra-clean transportation fuels from fossil resources, alone or in combination with other hydrocarbon materials. The DOE's Office of Fossil Energy intends to create strategic partnerships with industry targeted at the development and verification of advanced fuel-making processes that utilize fossil feedstocks. These processes will enable the production of ultra-clean transportation fuels, that improve the environment, while also expanding and diversifying the fossil resource base. This solicitation represents a major step toward creating a comprehensive DOE Fossil Energy Ultra-Clean Transportation Fuels Initiative—Petroleum, Natural Gas and Coal programs joining forces to pursue a common strategy. In addition, Fossil Energy is coordinating this and its other fuels efforts with DOE Energy Efficiency, and Renewable Energy Office of Transportation Technologies, the organization responsible for the engine/vehicle/after treatment technologies.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to the funds available. DOE expects to provide up to $50 million between October 1999 and September 2005 with approximately $10 to $15 million per project. Cost sharing by the applicant is required, and details of the cost sharing requirement are contained in the solicitation.

Solicitation Release Date: A draft of this Program Solicitation is available for comment on NETL's World Wide Web Server Internet System at *http://www.netl.doe.gov/business* until January 7, 2000. The final Program Solicitation is expected to be ready for release on or about January 14, 2000. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Raymond D. Johnson,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–33603 Filed 12–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG00–1–000]

Clear Creek Storage Company, L.L.C.; Notice of Filing

December 21, 1999.

Take notice that on November 23, 1999, Clear Creek Storage Company, L.L.C. (Clear Creek) filed standards of conduct under Order Nos. 497 *et.seq.,*[1] Order Nos. 566 *et seq.,*[2] and Order No.

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990); FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497– D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on* rehearing and extending sunset date. 59 FR 293 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27,

Continued

599.[3] Clear Creek also requested waivers of Standards of Conduct E and F, 18 CFR 161.3(e) and (f).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 2000. Protests will be considered by the Commission in determining the appropriate actions to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 99–33539 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Dominion Resources, Inc. and Consolidated Natural Gas Company; Notice of Filing

[Docket Nos. MG00–6–000 and EC99–81–001]

December 21, 1999.

Take notice that on December 10, 1999, Dominion Resources, Inc. (Dominion) and Consolidated Natural Gas Company (CNG), collectively ''the Applicants'', filed their compliance filing pursuant to the Commission's November 10, 1999 order issued in Docket No. EC99–81–000 approving their merger.

The Applicants' filing consists of standard of conduct commitments, under Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*[2] and Order No. 599,[3] rate schedule revisions for Elwood Marketing, LLC and Kincaid Generation L.L.C. and a copy of an open tap policy being filed by CNG Transmission Corporation in a separate proceeding.

The Applicants state that copies of their compliance filing have been served on all parties to Docket No. EC99–81–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33541 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats & Regs 31,064 (1998).

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transaction, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. ¶ 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1631–006]

Family Fiber Connection, Inc.; Notice of Filing

December 21, 1999.

Take notice that on December 2, 1999, Family Fiber Connection, Inc. filed their second and third quarterly reports for 1999 for information only. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33538 Filed 12–27–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–000]

Natural Gas Pipeline Company of America; Notice of Conference

December 16, 1999.

Take notice that the Commission's staff will convene a conference in the above-captioned proceeding on Tuesday, January 25, 2000, beginning at 10:00 a.m. in the Commission meeting room at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

On November 10, 1998, the Commission approved a settlement implementing auction procedures by which Natural Gas Pipeline Company of America allocates capacity on its system. Under the settlement, a review of the auction procedures must be held approximately one year after their implementation. The purpose of this conference is to begin this review.

All interested persons are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33594 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Fedeal Energy Regulatory Commission

[Docket Nos. MG00–2–000; MG00–3–000; MG00–4–000; and MG00–5–000]

Transwestern Pipeline Company; Florida Gas Transmission Company; Northern Natural Gas Company; Northern Border Pipeline Company; Notice of Filing

December 21, 1999.

Take notice that between December 7 and 8, 1999, each of the above-named natural gas pipeline companies filed revised standards of conduct under Order Nos. 497 *et seq.*,[1] Order Nos 566 *et seq.*,[2] and Order No. 599.[3]

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest in each separate proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 6, 2000. 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 in each separate proceeding. Copies of these filings are on file with the Commission and are available for public inspection. These filings may also be viewed on the Interent at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33540 Filed 12–27–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61.334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–3]

Agency Information Collection Activities; Toxic Chemical Release Reporting; Submission of ICR No. 1363.09 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: ''Toxic Chemical Release Reporting,'' (EPA ICR No. 1363.09; OMB Control No. 2070–0093) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on April 30, 2000. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on July 28, 1999 (64 FR 40862). EPA received a number of comments on this ICR during the comment period, which have been addressed.

DATES: Additional comments may be submitted on or before January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epa.gov,'' or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1363.09.

ADDRESSES: Send comments, referencing EPA ICR No. 1363.09 and OMB Control No. 2070–0093, to the following addresses:

Ms. Sandy Farmer, Office of Environmental Information (OEI), Mailcode 2822, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460;

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1363.09; OMB Control No. 2070–0093.

Current Expiration Date: Current OMB approval expires on April 30, 2000.

Title: Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Abstract: Section 313 of EPCRA requires owners or operators of certain facilities that manufacture, process or otherwise use any of over 600 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industries' attention on pollution prevention and source reduction opportunities.

The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 52.1 hours per response for an estimated 25,159 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are owners or operators of facilities that manufacture, process or otherwise use certain specified toxic chemicals and chemical categories, which are required under EPCRA section 313 to report annually on the environmental releases and transfers of and waste management activities for such chemicals.

Estimated No. of Respondents: 27,235.

Estimated Total Annual Burden on Respondents: 7,321,441 hours.

Frequency of Collection: Annually.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: December 21, 1999.

Richard T. Westlund,

Acting Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 99–33626 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6515–7]

Clean Air Act Advisory Committee Mobile Sources Technical Review Subcommittee Notification of Public Advisory Subcommittee Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on:

Wednesday, January 12, 2000 from 9:30 am to 3 pm Eastern Standard Time (registration starts at 9 am) at:

Holiday Inn Washington—On The Hill, 415 New Jersey Avenue, NW, Washington, DC 20001, Ph: (800) 638–1166, or 202/638–1616, Fax: (202) 638–0707

This is an open meeting and seating is on a first-come basis. During this meeting, the subcommittee may hear and receive handouts on the following subjects: progress reports from some of its workgroups (including review and approval of the On-Board Diagnostics Workgroup recommendations prior to submission to the CAAAC), updates and announcements on activities of general interest such as the Clean Air Act Advisory Committee, future of the subcommittee, status of key regulations, schedule for release of MOBILE6, and an update on the reorganization of OMS. The theme for this quarterly meeting will be fuels and may include presentations on reformulated gasoline (RFG), the future of fuels for motor vehicles: a DOE perspective, and California Air Resources Board RFG Phase 3 program.

The preliminary agenda and draft minutes from the previous meeting are available from the subcommittee's website at: http://transaq.ce.gatech.edu/epatac

Subcommittee members and interested parties requesting further technical information should contact:

Mr. John T. White, Alternate Designated Federal Officer, Assessment and Modeling Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4353, Fax: 734/214–4821, email: white.johnt@epa.gov

Subcommittee members and interested parties requesting administrative or logistics information should refer to a December 15, 1999 announcement of meeting letter or contact:

Ms. Jennifer Criss, FACA Management Officer, Assessment and Modeling Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, FACA Helpline: 734/214–4518, Ph: 734/214–4029, Fax: 734/214–4821, email: criss.jennifer@epa.gov

Individuals or organizations wishing to provide comments to the subcommittee should submit them to Mr. John T. White, Alternate Designated Officer, at the address above by January 4, 2000.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Donald E. Zinger,

Acting Director, Office of Mobile Sources.

[FR Doc. 99–33528 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30488; FRL–6484–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30488, must be received on or before January 27, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30488 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Driss Benmhend	9th Floor, CM #2, 703–308–9525, e-mail: benmhend.driss@epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Susanne Cerrelli	9th Floor, CM #2, 703–308–8077, e-mail: cerrelli.susanne@epa.gov.	Do.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30488. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30488 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30488. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the

subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 72179–R. *Applicant*: KHH BioSci, Inc., 920 Main Campus Dr., Suite 400, Raleigh, NC 27606. *Product name*: Reynoutria sachalinensis bioprotectant. *Active ingredient*: Extract of Reynoutria sachalinensis. *Proposed classification/Use*: None. To manufacture formulation of products used to increase natural defense mechanisms against certain fungal diseases. (D. Benmhend)

2. *File Symbol*: 72444–R. *Applicant*: Prophyta Biologischer Pflanzenschutz GmbH, c/o Technology Sciences Group, Inc., 101 17th St., NW., Suite 500, Washington, DC 20036. *Product name*: CONTANS® WG. Fungicide. *Active ingredient*: *Coniothyrium minitans* strain CON/M/91-08* at 5.30%. *Proposed classification/Use*: None. For use on agricultural crops, vegetables, fruit, herbs and spices, and ornamentals. (S. Cerrelli)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 16, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–33529 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51939; FRL–6484–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 8, 1999 to December 3, 1999, consists of the PMNs, which also includes Biotech PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51939 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Joe Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address:TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** -- Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51939. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51939 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments

must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51939 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 8, 1999 to December 3, 1999, consists of the PMNs, which also includes Biotech PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, which also includes Biotech PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN (not including the Biotech PMNs); the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0111	11/09/99	02/07/00	Union Carbide Corporation	(G) Polyurethane articles for consumer or industrial uses	(G) Polycaprolactone diol
P–00–0112	11/09/99	02/07/00	Lonza Inc.	(G) Commercial emulsiffier	(S) 1,2,3-propanetriol, homopolymer, dodecanoate*
P–00–0113	11/08/99	02/06/00	CBI	(G) Resin coating	(G) Urethane acrylate
P–00–0114	11/08/99	02/06/00	The Goodyear Tire & Rubber Company	(S) Tackifier resin for adhesive and rubber applications	(G) 2-methyl-2-butene/piperylene/terpene resin
P–00–0115	11/08/99	02/06/00	Bedoukian Research, Inc.	(S) Powerful, pleasant aldehydic odor. used in specialty fragrances (ffdca).; fragrance use: (soaps, detergents, air fresheners, scented papers).	(S) 8-undecenal, (8z)-*
P–00–0116	11/08/99	02/06/00	CBI	(G) Industrial adhesive component for open non-dispersive use	(G) Halogenated butadiene copolymer
P–00–0117	11/08/99	02/06/00	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Mono-halo substituted alkene
P–00–0118	11/08/99	02/06/00	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Unsaturated dialkyl acetal
P–00–0121	11/09/99	02/07/00	CBI	(S) Resin for coating	(G) Amine-salted polyester resin
P–00–0122	11/09/99	02/07/00	CBI	(S) Resin for coating	(G) Amine-salted polyester resin
P–00–0123	11/08/99	02/06/00	CBI	(G) Chemical additive to enhance zinc plating	(G) Amino alkane
P–00–0124	11/08/99	02/06/00	CBI	(G) Chemical additive to enhance zinc plating	(G) Amino alkane

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0125	11/08/99	02/06/00	CBI	(G) Chemical additive to enhance zinc plating	(G) Amino alkane
P–00–0126	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, compd. with 2-aminoethanol*
P–00–0127	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:1)*
P–00–0128	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:2)*
P–00–0129	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:3)*
P–00–0130	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, compd. with 2-aminoethanol (1:4)*
P–00–0131	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, sodium salt*
P–00–0132	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, monosodium salt*
P–00–0133	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, disodium salt*
P–00–0134	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, trisodium salt*
P–00–0135	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, tetrasodium salt*
P–00–0136	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, potassium salt*
P–00–0137	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, monopotassium salt*
P–00–0138	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, dipotassium salt*
P–00–0139	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, tripotassium salt*
P–00–0140	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, tetrapotassium salt*
P–00–0141	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, magnesium salt*
P–00–0142	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, magnesium sodium salt*
P–00–0143	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, magnesium salt (1:1)*
P–00–0144	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, magnesium salt (1:2)*
P–00–0145	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, magnesium sodium salt (1:1:1)*
P–00–0146	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, magnesium sodium salt (1:1:2)*
P–00–0147	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, ammonium salt*
P–00–0148	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, monoammonium salt*
P–00–0149	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, diammonium salt*
P–00–0150	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, triammonium salt*
P–00–0151	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-, tetraammonium salt*
P–00–0152	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis-*
P–00–0153	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n′*-1,2-ethanediylbis- sodium salt, compd. with 2-aminoethanol*

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0154	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis- monosodium salt, compd. with 2-aminoethanol (1:3)*
P–00–0155	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis- disodium salt, compd. with 2-aminoethanol (1:2)*
P–00–0156	11/09/99	02/07/00	Octel America, Inc.	(S) A chelant for laundry detergent; a chelant for laundry detergent	(S) L-aspartic acid, *n,n'*-1,2-ethanediylbis- trisodium salt, compd. with 2-aminoethanol (1:1)*
P–00–0157	11/16/99	02/14/00	CBI	(S) Additive for industrial coating	(G) Organo silane ester
P–00–0159	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0160	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0161	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0162	11/15/99	02/13/00	CBI	(G) Calcium carbonate scale inhibitor for cooling systems containing high electrolyte concentration	(G) Modified acrylate copolymer
P–00–0163	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0164	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0165	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0166	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0167	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0168	11/12/99	02/10/00	CBI	(G) Colorant for fuels, lubricants and greases	(G) Alkylated phenylazophenylazonapthylamine
P–00–0169	11/15/99	02/13/00	CBI	(G) Component for coating with open use	(G) Blocked isocyanate
P–00–0170	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Undecene*
P–00–0171	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Undecene, branched*
P–00–0172	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Dodecene, branched*
P–00–0173	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Tridecene*
P–00–0174	11/15/99	02/13/00	Shell Chemical Company	(S) Chemical intermediate (each substance see continuation sheet)*	(S) Tridecene, branched*
P–00–0175	11/15/99	02/13/00	CBI	(G) Surfactant component of industrial cleaning formulations.	(G) Alkyl ether carboxylic acid
P–00–0176	11/15/99	02/13/00	CBI	(G) Surfactant ingredient for use in cleaning products.	(G) Alkyl ether carboxylic acid
P–00–0177	11/15/99	02/13/00	CBI	(G) Surfactant component for industrial cleaning formulation	(G) Alkyl ether carboxylic acid, sodium salt
P–00–0178	11/16/99	02/14/00	CBI	(G) Open, non-dispersive use	(G) Modified acrylic polymer
P–00–0179	11/17/99	02/15/00	Eastman Chemical Company	(S) Molding plastic	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-cyclohexanedimethanol and dimethyl 1,4-benzenedicarboxylate*
P–00–0180	11/17/99	02/15/00	Elf Atochem North America, Inc.	(S) Intermediate paper processing solution	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide*
P–00–0181	11/17/99	02/15/00	CBI	(G) Automotive coating additive	(G) Reactive hydroxy carbamate*
P–00–0182	11/18/99	02/16/00	CBI	(S) Chemical intermediate used for further chemical processing	(G) Substituted phenylenediamide reaction products with substituted phenylenediamine, and sulfur
P–00–0183	11/18/99	02/16/00	CBI	(S) Leuco sulfur dye for the dyeing of cellulosic fibers	(G) Substituted phenylenediamide reaction products with substituted phenylenediamine, and sulfur, leuco derivs
P–00–0184	11/17/99	02/15/00	CBI	(G) Coating intermediate	(G) Reactive carbonate

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0185	11/18/99	02/16/00	Eastman Chemical Company	(S) Engineering thermoplastic	(S) 1,4-cyclohexanedicarboxylic acid, dimethyl ester, trans-, polymer with 1,4-cyclohexanedimethanol*
P–00–0186	11/19/99	02/17/00	CBI	(G)polymeric surfactant for fire extinguishing	(G) Perflourinated polyamine
P–00–0187	11/19/99	02/17/00	CBI	(G) Open, non-dispersive(colorant stabilizer)	(G) Ethoxyylated phenol, styrenated*
P–00–0188	11/19/99	02/17/00	CBI	(G) Open- non-dipersive(colorant stabilizer)	(G) Alkylanyl poly glycol ether
P–00–0189	11/22/99	02/20/00	Ashland Chemical Company	(G) Laminating adhesive	(G) Modified polyurethane
P–00–0190	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0191	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0192	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0193	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0194	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer
P–00–0195	11/22/99	02/20/00	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional acrylic polymer
P–00–0196	11/19/99	02/17/00	International Specialty Poducts	(S) Dye transfer inhibitor for detergents	(S) Pyridine, 4-ethehyl-, homopolymer, sodium chloroacetate quaternized*
P–00–0197	11/19/99	02/17/00	Reichhold,Inc.	(S) Binder in amine cured inks and coatings	(G) Urethane acrylate ester
P–00–0198	11/19/99	02/17/00	Reichhold,Inc.	(S) Binder in amine cured inks and coatings	(G) Urethane acrylate ester
P–00–0199	11/19/99	02/17/00	Dow Corning Corporation	(S) Binder resin for pressure sensitive tapes	(S) Siloxanes and silicones, di-me, hydroxy-terminated, polymers with silicic acid*
P–00–0200	11/23/99	02/21/00	CBI	(S) Coating	(S) 1,3-benzenedicarboxylic acid, polymer with 1,2-ethanediamine, hexanedioic acid, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane (9ci)*
P–00–0201	11/23/99	02/21/00	Condea Servo LLC	(G) Reactive monomer	(G) Dimerdiol diacrylate
P–00–0202	11/22/99	02/20/00	CBI	(G) Foam insulation	(G) Aromatic poyether polyol
P–00–0203	11/23/99	02/21/00	CBI	(G) Synthetic lubricant base stock	(G) Fatty acid ester
P–00–0204	11/23/99	02/21/00	CBI	(S) Thickening agent for use in cosmetic and detergents	(G) Sodium salt of acrylic acid/vinyl ester copolymer
P–00–0205	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0206	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0207	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0208	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0209	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0210	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0211	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0212	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0213	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0214	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0215	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0216	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0217	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0218	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0219	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0220	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0221	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0222	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0223	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0224	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0225	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0226	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0227	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0228	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0229	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0230	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0231	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0232	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0233	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0234	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0235	11/24/99	02/22/00	CBI	(G) Laminating adhesive	(G) Urethane prepolymer
P–00–0236	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0237	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0238	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0239	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0240	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0241	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0242	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0243	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0244	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0245	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0246	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0247	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0248	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0249	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0250	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0251	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0252	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0253	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0254	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0255	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0256	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0257	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0258	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0259	11/24/99	02/22/00	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–00–0260	11/26/99	02/24/00	CBI	(S) Resin for coatings	(G) Amine salted acrylic modified polyurethane resin
P–00–0261	11/26/99	02/24/00	CBI	(S) Resin for coatings	(G) Amine salted acrylic modified polyurethane resin
P–00–0262	11/29/99	02/27/00	CBI	(G) Open, non-dispersive use	(G) Imidazole functional polyalkyl acrylate
P–00–0263	11/26/99	02/24/00	CBI	(S) Polymer intermediate for final polymer	(G) Amine salted polyurethane resin
P–00–0264	11/26/99	02/24/00	CBI	(S) Polymer intermediate for final polymer	(G) Amine salted polyurethane resin
P–00–0265	11/29/99	02/27/00	CBI	(G) Open, non-dispersive use	(G) Tin functional aliphatic copolymer
P–00–0266	11/29/99	02/27/00	CBI	(S) Oil field production aid;site-limited intermediate	(G) Acrylic acid, polymer with partial salt of acylate ester
P–00–0267	11/29/99	02/27/00	CBI	(S) Oil field production aid	(G) Acrylic acid, polymer with partial salt of acylate ester, reaction product with substituted polyglycol
P–00–0268	11/24/99	02/22/00	Asahi Chemical Industry America, Inc.	(G) Intermediate for industrial product	(G) Acetyl heterocyclic compound
P–00–0269	11/26/99	02/24/00	CBI	(G) Component in a sealant	(G) Polyurethane prepolymer
P–00–0270	11/26/99	02/24/00	CBI	(S) Cosmetic additive	(G) Dimethicone copolyol polyacrylate
P–00–0271	11/26/99	02/24/00	Kowa American Corporation	(G) Textile processing agent	(S) 1,3-dioxolane, 2,2′-(1,7-heptanediyl)bis-*
P–00–0272	11/26/99	02/24/00	Kowa American Corporation	(G) Textile processing agent	(S) 1,3-dioxolane, 2,2′-(1-methyl-1,6-hexanediyl)bis-*
P–00–0273	11/29/99	02/27/00	Solutia Inc.	(G) Flame retardant	(G) 3-substituted propanoic acid, glycol ester
P–00–0274	11/30/99	02/28/00	CBI	(S) Resin for coatings	(G) Amine-salted polyester resin
P–00–0275	11/30/99	02/28/00	CBI	(S) Resin for coatings	(G) Amine-salted polyester resin
P–00–0276	11/30/99	02/28/00	International Specialty Products	(S) Protectant for digital printing inks	(S) 2-propenamide, *n*-[3-(dimethylamino)propyl]-2-methyl-, polymer with 1-ethenyl-2-pyrrolidinone, sulfate*
P–00–0277	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Ethoxylated alcohol
P–00–0278	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Diethoxylated alcohol
P–00–0279	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Triethoxylated alcohol
P–00–0280	11/30/99	02/28/00	Union Carbide Corporation	(G) Solvents	(G) Polyethoxylated alcohol

I. 109 Premanufacture Notices Received From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0281	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metal-working fluids and industrial lubricants	(G) Alkarylsulfonic acid, sodium salts
P–00–0282	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metal-working fluids and industrial lubricants	(G) Alkarylsulfonic acid, cpds with ethanolamine
P–00–0283	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metal-working fluids and industrial lubricants	(G) Alkarylsulfonic acid, potassium salts
P–00–0284	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/ emulsifier for metal-working fluids and industrial lubricants	(G) Alkarylsulfonic acid, magnesium salts
P–00–0285	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, calcium salts
P–00–0286	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, barium salts
P–00–0287	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metal-working fluids and industrial lubricants	(G) Alkaryl sulfonic acid, sodium salts
P–00–0288	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metal-working fluids and industrial lubricants	(G) Alkarylsulfonic acid, cpds with ethanolamine
P–00–0289	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metal-working fluids and industrial lubricants	(G) Alkarylsulfonic acid, potassium salt
P–00–0290	12/01/99	02/29/00	Pilot Chemical Company	(S) Surfactant/emulsifier for metal-working fluids and industrial lubricants	(G) Alkarylsulfonic acid, magnesium salts
P–00–0291	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, calcium salts
P–00–0292	12/01/99	02/29/00	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkarylsulfonic acid, barium salts
P–00–0293	12/01/99	02/29/00	Ciba Specialty Chemicals Corporation	(S) Extreme pressure anti-wear addititve for lubricating oils	(G) Organophosphinothioyl ester
P–00–0294	12/02/99	03/01/00	CBI	(G) Colorants for pertroleum products, inks and grease	(G) Alkayated phenylamino anthraquinone
P–00–0295	12/01/99	02/29/00	CBI	(G) Monomer for use in copolymer	(G) Alkyl vinyl ester
P–00–0296	12/02/99	03/01/00	3M Company	(G) Mixing agent	(G) Styrene copolymer
P–00–0297	12/01/99	02/29/00	Pilot Chemical Company	(G) Chemical intermediate-destructive use	(G) Alkarylsulfonic acid
P–00–0298	12/01/99	02/29/00	Pilot Chemical Company	(G) Chemical intermediate, destructive use	(G) Alkylbenzene
P–00–0299	12/02/99	03/01/00	CIBA Specialty Chemicals Corporation	(G) Textile dye	(G) 1,5-naphthalenedisulfonic acid, 3-[[2-(acetylamino)-4-[[4-chloro-6-[substituted]-1,3,5-triazin-2-yl]amino]phenyl]azo]-, trisodium salt
P–00–0300	12/01/99	02/29/00	CBI	(S) Hydrate inhibitor	(G) Alkyl acid halides, reaction products with alkylhalide and alkoxylated alkylamines
P–00–0301	12/02/99	03/01/00	Reichhold, Inc.	(S) Coating Addtive	(G) Triethylamine salt of aliphatic polyurethane polymer
G00–001	10/22/99	None	Prolume Ltd.	Enzyme production	Microorganism
G00–002	11/19/99	None	Aureozme, Inc.	Enzyme production	Microorganism

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 35 Notices of Commencement From: 11/08/99 to 12/03/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–1409	11/29/99	11/09/99	(G) Heterocyclic aldehyde
P–96–0001	11/22/99	11/05/99	(G) Mono-amine/acid salt carboxylates
P–98–0039	11/10/99	11/02/99	(G) Organic yellow pigment
P–98–0521	11/08/99	11/02/99	(G) Tdi/ mdi polyalkyleneoxide prepolymer
P–98–0522	11/08/99	11/02/99	(G) Tdi/ mdi polymer polyol prepolymer

II. 35 Notices of Commencement From: 11/08/99 to 12/03/99—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–99–0153	11/15/99	11/01/99	(G) Polyoxyalkylene acrylate
P–99–0254	11/10/99	11/02/99	(S) Phosphinic acid, (2-methylpheny)-, potassium salt; phosphinic acid, (3-methylphenyl)-, potassium salt; phosphinic acid, (4-methylphenyl)-, potassium salt*
P–99–0320	11/19/99	10/26/99	(S) Acetic acid, hydroxysulfino-, diisodium salt; acetic acid, hydroxysulfo-, diisodium salt*
P–99–0482	11/12/99	11/07/99	(G) Organometallic intermediate
P–99–0638	11/12/99	11/04/99	(G) Alanine, *n*-[5-(acetylamino)-4-[(2-chloro-6-cyano-4-nitrophenyl)azo]-2-methoxyphenyl]-*n*-(substituted alkoxy)-, methyl ester
P–99–0639	11/22/99	11/12/99	(G) Chlorohydroxy substituted amine reaction products with leuco sulphur dye
P–99–0696	11/12/99	11/05/99	(G) Aliphatic, aromatic polyol
P–99–0697	11/12/99	11/05/99	(G) Aliphatic, aromatic polyol
P–99–0707	11/18/99	11/04/99	(G) Silicone polymer
P–99–0744	11/12/99	11/04/99	(G) 2,7-naphthalenedisulfonic acid, 3-amino-4-[[4-[[4-[[2-[2-(substituted)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-5-hydroxy-, trisodium salt
P–99–0753	11/16/99	11/04/99	(G) Substituted heterocyclic pyrazole carboxylic acid salt
P–99–0794	11/15/99	11/08/99	(G) Acrylic acid, polymer with alkyl acrylates and substituted ethene
P–99–0826	11/12/99	10/28/99	(G) Epoxidized copolymer of phenol and aromatic hydrocarbon
P–99–0827	11/12/99	10/28/99	(G) Epoxidized copolymer of phenol and aromatic hydrocarbon
P–99–0852	11/15/99	11/09/99	(G) Fatty acid polyester
P–99–0855	11/12/99	11/04/99	(G) Cashew nutshell liquid, reaction products with formaldehyde and aliphatic amine
P–99–0955	11/23/99	10/26/99	(G) Phosphoric acid ester oligomer
P–99–0961	11/24/99	11/17/99	(G) Modified fatty acid ester
P–99–0967	11/15/99	11/03/99	(G) Colorant intermediate
P–99–0969	11/15/99	11/03/99	(G) Polyoxyalkylene substituted chromophore
P–99–0980	11/17/99	10/18/99	(G) Polyester/aliphatic polyurethane dispersion in water
P–99–0996	11/12/99	10/14/99	(G) Urethane acrylate
P–99–1033	11/19/99	10/31/99	(G) Acrylate copolymer with 2-ethylhexylacrylate
P–99–1054	11/15/99	10/25/99	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1065	11/22/99	10/25/99	(G) Organic silicon polymer
P–99–1066	11/22/99	10/25/99	(G) Organic silicon polymer
P–99–1128	11/23/99	11/17/99	(G) Styrene-methacrylate copolymer
P–99–1177	11/08/99	11/05/99	(G) Acylonitrile and butadadiene extended epoxy resin
P–99–1178	11/08/99	11/05/99	(G) Acylonitrile and butadadiene extended epoxy resin
P–99–1198	11/18/99	11/10/99	(G) Hot melt polyurethane adhesive

List of Subjects

Environmental protection, Chemicals, Premanufacturer Notices.

Dated: December 21, 1999.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–33629 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: New collection.

Title: Asset Purchaser Eligibility.

Estimate of Annual Burden:

Number of respondents: 1,800.

Frequency of response: Occasional.

Number of responses: 2,500.

Time per response: 30 minutes.

Total annual burden: 1,250 hours.

OMB: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC: Steven F. Hanft (202) 898–3907, Office of the Executive Secretary, Room F–4062, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

COMMENTS: Comments on this collection of information are welcome and should be submitted on or before January 27, 2000 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC acquires assets as the result of being appointed conservator or receiver of failing financial institutions and generally sells these assets through competitive sales. The FDIC is statutorily required to promulgate a regulation prohibiting the sale of assets held by insured depository institutions that have been placed under the conservatorship or receivership of the FDIC to certain individuals or entities who profited or engaged in wrongdoing at the expense of those failed institutions, or seriously mismanaged those failed institutions. The statute specifies classes of persons prohibited

from purchasing assets of failed institutions from the FDIC. (12 U.S.C. 1821(p)). The statutory requirement will be implemented by a recently proposed regulation, ''Restrictions on the Purchase of Assets from the FDIC,'' (published at 64 FR 51084, Sept. 21, 1999) and a Purchaser Eligibility Certification that the FDIC will use to determine a person's eligibility to purchase assets.

Dated: December 22, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–33618 Filed 12–27–99; 8:45 am]

BILLING CODE 6714–01–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 January 20, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, and NB Holdings Corporation, both of Charlotte, North Carolina; to acquire 100 percent of the voting shares of Bank of America Oregon, National Association, Portland, Oregon (in organization).

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. NBG Bancorp, Inc., Athens, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Georgia, Athens, Georgia (in organization).

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Zumbrota Agency, Inc., Zumbrota, Minnesota, and its wholly-owned subsidiary, Pine Island Bancshares, Inc., Zumbrota, Minnesota; to acquire 100 percent of the voting shares of Tri County Investment Company, Inc., Pine Island, Minnesota, and thereby indirectly acquire Security State Bank of Pine Island, Pine Island, Minnesota. In addition, Applicants also have applied to become bank holding companies.

In connection with this application, Applicants also have applied to acquire the insurance agency activity of Tri County Investment Company, Inc., Pine Island, Minnesota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33543 Filed 12–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE BOARD

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, January 3, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33752 Filed 12–23–99; 11:50 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Populations.

Times and Dates: 10 a.m.–5:30 p.m., January 24, 2000; 10 a.m.–4 p.m., January 25, 2000

Place: Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Populations will meet on January 24–25, 2000 to discuss and assess the feasibility of recording, evaluating and analyzing measures of functional status on health records, such as enrollment in health plans, records of medical encounters, and standardized attachments to such records. Several panels of experts will explore issues related to the collection of information on functional status in administrative records and data collection systems, and will discuss data collection and measurement efforts necessary to address the issue effectively. This is the first of several public meetings being planned by the Subcommittee to discuss this topic.

All topics are tentative and subject to change. Prior to the meeting, please check the NCVHS web site, where a detailed agenda will be posted when available.

Contact Person for More Information: Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by

visiting the NCVHS website (http://ncvhs.hhs.gov)) where an agenda for the meeting will be posted when available.

Additional information may be obtained by calling Carolyn Rimes, Lead Staff Person for the NCVHS Subcommittee on Populations, Office of Research and Demonstrations, Health Care Financing Administration, MS–C–13–01, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850, telephone (410) 786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: December 21, 1999.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 99–33621 Filed 12–27–99; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and date: 8:30 a.m.–4 p.m., January 20, 2000.

Place: The Wyndham Garden Hotel, 125 10th Street, Atlanta, Georgia 30309.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: The committee will anticipate, identify, and propose solutions to strategic and broad issues facing CDC.

Matters to be Discussed: Agenda items will include updates from Dr. Jeffrey P. Koplan, M.D., M.P.H., Director, CDC, regarding the Top 10 Public Health Challenges for the Next Century.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 17, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–33560 Filed 12–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; *Revised* Promulgation for Fiscal Year 2000.

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 2000.

SUMMARY: The initial **Federal Register** notice was published on November 10, 1998 based on the authorization level of $2.380 billion. The grant awards for Fiscal Year 2000 will be issued based upon the appropriation amount of $1.775 billion. Of this amount, $425,000,000 shall not be available for obligation until September 29, 2000. These figures are available on the ACF homepage on the internet: http://www.acf.dhhs.gov/programs/ocs/ssbg.

Further notification of revised allotments for SSBG will no longer be published in the **Federal Register,** but will be available on the internet address given above.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, (202) 401–2333.

EFFECTIVE DATE: The allotments are effective October 1, 1999.

Dated: December 20, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–33533 Filed 12–27–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2000

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2000. The Prescription Drug User Fee Act of 1992 (the PDUFA), as amended by the Food and Drug Administration Modernization Act of 1997 (the FDAMA), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Fees for applications for FY 2000 were set by the FDAMA, subject to adjustment for inflation. Total application fee revenues fluctuate with the number of fee-paying applications FDA receives. Fees for establishments and products are calculated so that total revenues from each category will approximate FDA's estimate of the revenues to be derived from applications.

FOR FURTHER INFORMATION CONTACT: Michael E. Roosevelt, Office of Financial Management (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5088.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Public Law 102–571), as amended by the FDAMA (Public Law 105–115), establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biologic products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 1998 through 2002, under the amendments enacted in the FDAMA, the application fee rates are set in the statute, but are to be adjusted annually for cumulative inflation since FY 1997. Total application fee revenues are structured to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases.

Each year from FY 1998 through 2002, FDA is required to set establishment fees and product fees so that the estimated total fee revenue from each of these two categories will equal the total revenue FDA expects to collect from application fees that year. This procedure continues the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fee: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2000 for application, establishment, and

product fees. These fees are retroactive to October 1, 1999, and will remain in effect through September 30, 2000. For fees already paid on applications and supplements submitted on or after October 1, 1999, FDA will bill applicants for the difference between fees paid and fees due under the new fee schedule. For applications and supplements submitted after December 31, 1999, the new fee schedule must be used. Invoices for establishment and product fees for FY 2000 will be issued in December 1999, using the new fee schedules.

II. Inflation and Workload Adjustment Process

The PDUFA, as amended by the FDAMA, provides that fee rates for each FY shall be adjusted by notice in the **Federal Register**. The adjustment must reflect the greater of: (1) The total percentage change that occurred during the preceding FY in the Consumer Price Index (CPI) (all items; U.S. city average), or (2) the total percentage pay change for that FY for Federal employees stationed in the Washington, DC metropolitan area. The FDAMA provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)(1)).

The FDAMA also structures the total application fee revenue to increase or decrease each year as the number of fee-paying applications submitted to FDA increases or decreases. This provision allows revenues to rise or fall as this portion of FDA's workload rises or falls. To implement this provision, each year FDA will estimate the number of fee-paying applications it anticipates receiving. The number of applications estimated will then be multiplied by the inflation-adjusted statutory application fee. This calculation will produce the FDA estimate of total application fee revenues to be received.

The PDUFA also provides that FDA shall adjust the rates for establishment and product fees so that the total revenues from each of these categories is projected to equal the revenues FDA expects to collect from application fees that year. The FDAMA provides that the new fee rates based on these calculations be adjusted within 60 days after the end of each FY (21 U.S.C. 379h(c)(2)).

III. Inflation Adjustment and Estimate of Total Application Fee Revenue

The FDAMA provides that the application fee rates set out in the statute be adjusted each year for cumulative inflation since 1997. It also provides for total application fee revenues to increase or decrease based on increases or decreases in the number of fee-paying applications submitted.

A. Inflation Adjustment to Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data for safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A) and 379h(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fees described above are set out in the FDAMA for FY 2000 ($256,338 for applications requiring clinical data, and $128,169 for applications not requiring clinical data or supplements requiring clinical data) (21 U.S.C. 379h(b)(1)), but must be adjusted for cumulative inflation since 1997. That adjustment each year is to be the greater of: (1) The total percentage change that occurred during the preceding FY in the CPI, or (2) the total percentage pay change for that FY for Federal employees, as adjusted for any locality-based payment applicable to employees stationed in the District of Columbia. The FDAMA provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)).

The adjustment for FY 1998 was 2.45 percent (62 FR 64849, December 9, 1997). This was the greater of the CPI increase for FY 1997 (2.15 percent) or the increase in applicable Federal salaries (2.45 percent).

The adjustment for FY 1999 was 3.68 percent (63 FR 70777 at 70778, December 22, 1998). This was the greater of the CPI increase for FY 1998 (1.49 percent) or the increase in applicable Federal salaries (3.68 percent).

The adjustment for FY 2000 is 4.94 percent. This is the greater of the CPI increase for FY 1999 (2.62 percent) or the increase in applicable Federal salaries (4.94 percent).

Compounding these amounts (1.0245 times 1.0368 times 1.0494) yields a total compounded inflation increase of 11.47 percent for FY 2000. The adjusted application fee rates are computed by adding one to the decimal equivalent of this percent (0.1147) and multiplying this amount (1.1147) by the FY 2000 statutory application fee rates stated above ($256,338 for applications requiring clinical data, and $128,169 for applications not requiring clinical data or supplements requiring clinical data). For FY 2000 the adjusted application fee rates are $285,740 for applications requiring clinical data, and $142,870 for applications not requiring clinical data or supplements requiring clinical data. These amounts must be submitted with all applications during FY 2000.

B. Estimate of Total Application Fee Revenue

Total application fee revenues for FY 2000 will be estimated by multiplying the number of fee-paying applications FDA receives in FY 2000 (from October 1, 1999, through September 30, 2000) by the fee rates calculated in the preceding paragraph. Before fees can be set for establishment and product fee categories, each of which are projected to be equal to total revenues FDA collects from application fees, FDA must first estimate its total FY 2000 application fee revenues. To do this FDA first determines its FY 1999 fee-paying full application equivalents, and uses that number in a linear regression analysis to predict the number of fee-paying full application equivalents expected in FY 2000. This is the same technique applied last year.

In FY 1999, FDA received and filed 119 human drug applications that required clinical data for approval, 17 that did not require clinical data for approval, and 112 supplements to human drug applications that required clinical data for approval. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee, the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by two. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications that may be subject to full application fees.

In addition, as of September 30, 1999, FDA refused to file, or firms withdrew before filing, six applications that required clinical data, three applications that did not require clinical data, and four supplements requiring clinical data. The full applications refused for filing or withdrawn before filing pay one-fourth the full application fee and are counted as one-fourth of an application; the applications that do not require clinical data and the supplements refused for filing or withdrawn before filing pay one-eighth

of the full application fee and are each counted as one-eighth of an application.

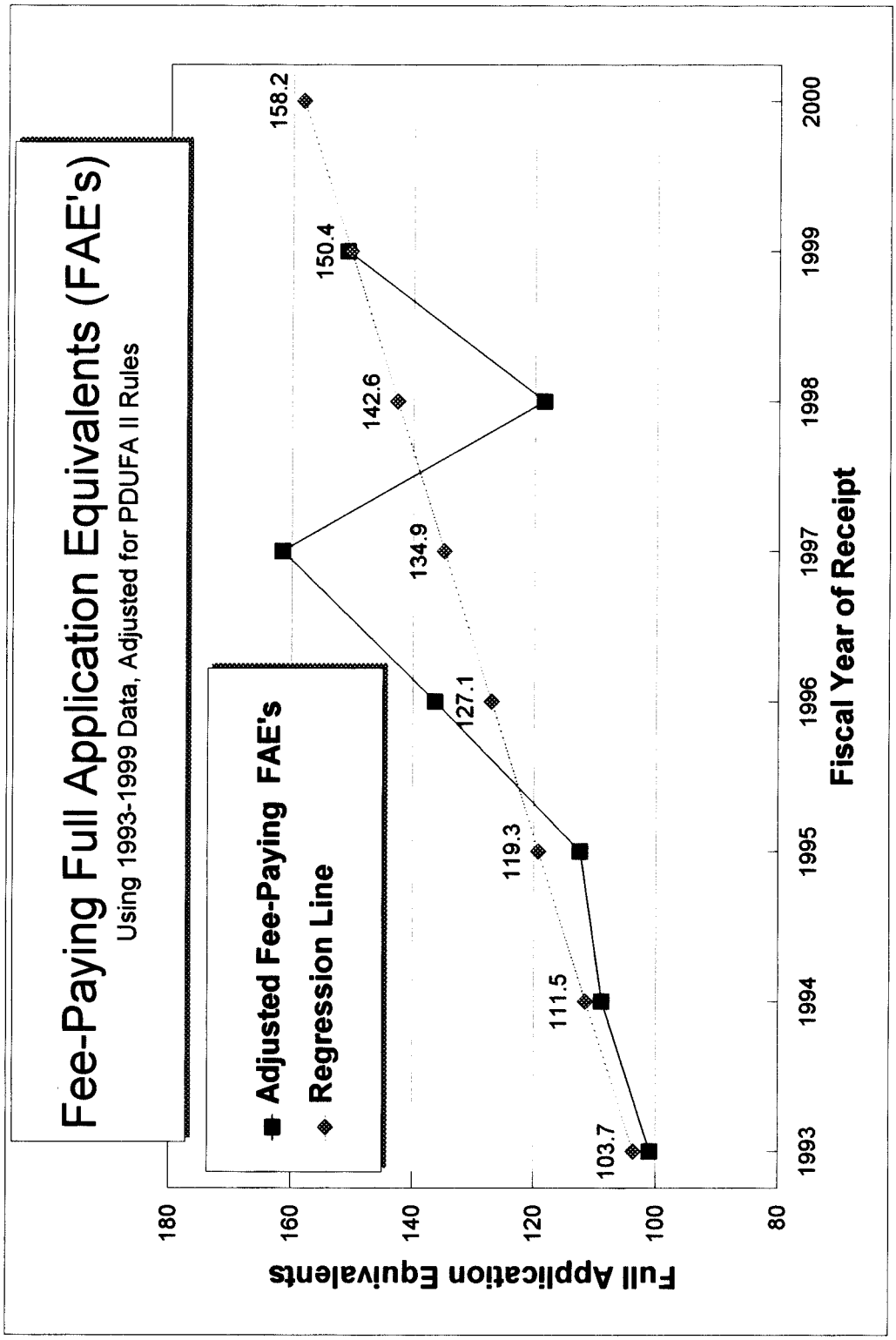
Using this methodology, the number of full application equivalents that were submitted for review in FY 1999 was 186, before any exemptions, waivers or reductions. Under the FDAMA, FDA waives fees for certain small businesses submitting their first application and certain orphan products, and certain supplements for pediatric indications are exempted from application fees. In addition, the FDAMA provides a number of other grounds for waivers (public health necessity, preventing significant barriers to innovation, and fees exceed the cost). In FY 1999, waivers or exemptions were applied to 35 full application equivalents (thirteen for orphan products, seven for small businesses, five for pediatric supplements, and ten miscellaneous exemptions/waivers). Therefore, for FY 1999, FDA estimates that it received the equivalent of 151 (186 minus 35) full application equivalents that will pay fees, after allowing for exemptions, waivers and reductions.

A linear regression line based on the adjusted number of fee-paying full application equivalent submissions since 1993, and including our FY 1999 total of 151 fee-paying full application equivalents, projects the receipt of 158 fee-paying full application equivalent submissions in FY 2000, as reflected in Table 1 of this document and the graph below.

Table 1.

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000
Adjusted fee-paying FAE's	101.0	108.9	112.5	136.3	161.5	118.5	150.9	
Regression line	103.7	111.5	119.3	127.1	134.9	142.6	150.4	158.2

BILLING CODE 4160–01–F


Fee-Paying Full Application Equivalents (FAE's)
Using 1993-1999 Data, Adjusted for PDUFA II Rules
Adjusted Fee-Paying FAE's
Regression Line
Full Application Equivalents
180
160
140
120
100
80
Fiscal Year of Receipt
1993
1994
1995
1996
1997
1998
1999
2000
103.7
111.5
119.3
127.1
134.9
142.6
150.4
158.2

The total FY 2000 application fee revenue is estimated by multiplying the adjusted application fee rate ($285,740) by the equivalent number of applications projected to qualify for fees in FY 2000 (158), for a total estimated application fee revenue in FY 2000 of $45,146,920. This is the amount of revenue that FDA is also expected to derive both from establishment fees and from product fees.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 1999, the establishment fee was based on an estimate of 318 establishments subject to fees. For FY 1999, 343 establishments qualified for and were billed for establishment fees, before all decisions on requests for waivers or reductions were made. FDA estimates that a total of 25 establishment fee waivers will be granted in FY1999, for a net of 318 fee-paying establishments, and will use this number again for its FY 2000 estimate of establishments paying fees, after taking waivers into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($45,146,920), by the estimated 318 establishments, for an establishment fee rate for FY 2000 of $141,971 (rounded to the nearest dollar).

B. Product Fees

At the beginning of FY 1999, the product fee was based on an estimate that 2,224 products would be subject to product fees. By the end of FY 1999, 2,317 products qualified and were billed for product fees before all decisions on requests for waivers or reductions were made. Assuming that there will be about 55 waivers granted, FDA estimates that 2,262 products will qualify for product fees in FY 1999, after allowing for waivers and exemptions, and will use this number for its FY 2000 estimate. Accordingly, the FY 2000 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($45,146,920) by the estimated 2,262 products for a product fee rate of $19,959 (rounded to the nearest dollar).

V. Adjusted Fee Schedules for FY 2000

The fee rates for FY 2000 are set out in Table 2 of this document:

Table 2.

Fee Category	Fee Rates for FY 2000
Applications:	
Requiring clinical data	$285,740
Not requiring clinical data	$142,870
Supplements requiring clinical data	$142,870
Establishments	$141,971
Products	$19,959

VI. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA that is submitted after December 31, 1999, must be accompanied by the appropriate application fee established in the new fee schedule. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the U.S. Food and Drug Administration. Please include the user fee ID number on your check. Your check can be mailed to: Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Mellon Bank, Three Mellon Bank Center, 27th Floor (FDA 360909), Pittsburgh, PA 15259–0001. (Note: This Mellon Bank Address is for courier delivery only.) Please make sure that the FDA P.O. Box number (PO Box 360909) is on the enclosed check.

FDA will bill applicants who submitted application fees from October 1 to December 31, 1999, for the difference between the amount they submitted and the amount specified in the Adjusted Fee Schedule for FY 2000.

B. Establishment and Product Fees

By December 31, 1999, FDA will issue invoices for establishment and product fees for FY 2000 under the new Adjusted Fee Schedule. Payment will be due by January 31, 2000. FDA will issue invoices in October 2000 for any products and establishments subject to fees for FY 2000 that qualify for fees after the December 1999 billing.

Dated: December 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33685 Filed 12–22–99; 5:00 pm]

BILLING CODE 4160–01–F

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: National Registry of Effective Prevention Programs

New—Section 515(d) of the Public Health Service Act (42 USC 290bb–21) requires that the Director of SAMHSA's Center for Substance Abuse Prevention (CSAP)establish a national data base providing information on programs for the prevention of substance abuse and specifies that the data base shall contain information appropriate for use by public entities and information

appropriate for use by nonprofit private entities. Since 1994, CSAP has met this responsibility through the High Risk Populations Databank on programs for the prevention of substance abuse funded by direct CSAP grants. Because relatively few direct grants of this type have been issued in recent years, CSAP must expand its information collection to include voluntary submission of descriptions of effective substance abuse prevention conducted by state and local governments, nonprofit entities, and the private sector.

CSAP has developed a template to enable practitioners who have evidence that their program reduces risk factors or increases protective factors pertaining to substance abuse to nominate their own standardized program for the Registry. Each program that is nominated should have been standardized (including curriculum manuals, implementation manuals, videotapes, etc.), well implemented, and findings should derive from well designed research efforts. Program models nominated will be reviewed and rated by experts annually to be recommended to the field.

CSAP will promote selected models by providing funds to support development of program materials for dissemination, by connecting program developers with organizations able to help in the dissemination efforts, and by promoting model programs nationally through CSAP's State Incentive Grant recipients and regional Centers for Applied Prevention Technology. Annual burden estimates for the Registry are shown in the table below.

Number of respondents	Number of responses/respondent	Hours/response	Total burden hours
250	1	1.25	313

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: December 20, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–33562 Filed 12–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Statement of Findings; San Carlos Apache Tribe Water Rights Settlement Act of 1992

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Statement of findings of actions completed to implement the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (Settlement Act), Pub. L. 102–575, 106 Stat. 4740, as amended.

SUMMARY: The Secretary of the Interior is causing this notice to be published as required in section 3711 of the Settlement Act, in order to implement the Settlement Act.

DATES: The Settlement Act requires that this notice must be published in the **Federal Register** no later than December 31, 1999.

ADDRESSES: Address all comments concerning this notice to Ms. Deborah Saint, San Carlos Apache Tribe Water Rights Settlement Act Implementation Team Chairperson, Bureau of Reclamation, Native American Affairs Office, 400 North 5th Street, Suite 1470, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Saint, 602–379–3199.

SUPPLEMENTARY INFORMATION: The purpose of the Settlement Act is:

(1) To approve, ratify, and confirm an agreement entered into by the San Carlos Apache Tribe (Tribe) and its neighboring non-Indian communities (Settlement Agreement) to finally resolve the Tribe's water rights claims;

(2) To authorize and direct the Secretary of the Interior to execute and perform such Settlement Agreement; and

(3) To authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Settlement Agreement and the Settlement Act.

In order for the terms and conditions of the Settlement Act and the Settlement Agreement to be effective, the Secretary of the Interior is required to make a statement of findings that certain conditions, as specified in the Settlement Act, have been met.

Statement of Findings

As required by section 3711 of the Settlement Act, I find as follows:

1. The Secretary of the Interior has fulfilled the requirements of sections 3704 and 3706 of the Settlement Act.

2. The Roosevelt Water Conservation District subcontract for agricultural water service from the Central Arizona Project has been revised and executed as provided in section 3705(b) of the Settlement Act.

3. The funds authorized by section 3707(c) of the Settlement Act have been appropriated and deposited into the San Carlos Apache Tribe Development Trust Fund.

4. The contract between the United States Economic Development Administration and the Tribe, referred to in section 3707(a)(2) of the Settlement Act, has been amended.

5. The State of Arizona has appropriated and deposited into the San Carlos Apache Tribe Development Trust Fund $3,000,000, as required by the Settlement Agreement.

6. The stipulations attached to the Settlement Agreement as Exhibits ''D'' and ''E'' have been approved.

7. The Settlement Agreement has been modified, to the extent it was in conflict with the Settlement Act, and has been executed by the Secretary of the Interior.

Dated: December 22, 1999.

David J. Hayes,

Acting Deputy Secretary of the Interior.

[FR Doc. 99–33589 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1610–DG]

Planning Analysis, Arkansas

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of public meeting/request for public input.

SUMMARY: The Jackson Field Office, Eastern States, requests additional public input before deciding on future management of 13 tracts of public land in Arkansas. A Proposed Planning Analysis for BLM-managed tracts of land in Arkansas, which was released November 19, 1999, in withdrawn. After additional public input is considered, a new Proposed Planning Analysis will be released.

DATES: A public meeting to receive public input will be held 6:30 to 9:30 p.m., January 27, 2000 at the Civic Center Gymnasium in Marshall, Arkansas, which is located in Searcy County. The Jackson Field Office also welcome written input, which will be accepted until February 29, 2000.

ADDRESSES: Written input may be sent to: Bruce Dawson, Field Manager, Jackson Field Office, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: Duane Winters or Judy Pace, BLM, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206, (601) 977–5400.

SUPPLEMENTARY INFORMATION: There are 12 tracts of public land in Arkansas located in seven different counties: Baxter, Cleburne, Crawford, Fulton, Pike, Searcy, and Van Buren. The total acreage of the twelve tracts is 535 acres with the largest tract being 160 acres and the smallest 5 acres. The request for additional public input is because of increased public interest after release of the Proposed Planning Analysis on November 29, 1999, which proposed to make the tracts available for disposal through sale, exchange or Recreation and Public Purposes Act conveyance.

Duane Winters,

Acting Field Manager, Jackson.

[FR Doc. 99–33563 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1430–ET; CACA 38618]

Public Land Order No. 7423; Withdrawal of Public Lands Within the Corridor of the South Fork of the American River; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 99–32656, beginning on page 70277 in the issue of Thursday, December 16, 1999, make the following correction:

On page 70277 in the third column, the Effective Date was shown as December 16, 1999. That date should be changed to December 8, 1999, which is the date that Public Land Order No. 7423 was signed by Assistant Secretary of the Interior Kevin Gover. This change is consistent with the decision in the case of George W. Bolieu, 55 I. D. 85 (1934).

Dated: December 21, 1999.

Nancy J. Alex,

Acting Chief, Branch of Lands (CA–931)

[FR Doc. 99–33617 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–950–1420–00–P)

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10 a.m., December 15, 1999.

The plat representing the dependent resurvey of a portion of Tract 43 and a portion of the subdivisional lines, T. 12 N., R. 110 W., Sixth Principal Meridian, Wyoming, Group No. 622, was accepted December 13, 1999.

The plat representing the dependent resurvey of a portion of the Eigth Guide Meridian West, through Township 47 North, between Ranges 64 and 65 West, portions of the south and west boundaries, the north boundary and a portion of the subdivisional lines, T. 47 N., R. 65 W., Sixth Principal Meridian, Wyoming, Group No. 638, was accepted December 13, 1999.

The plat representing the dependent resurvey of portions of the north boundary and the subdivisional lines, and the subdivision of Section 5, and the metes and bounds survey of Lot 1, Section 5, T. 38 N., R. 115 W., Sixth Principal Meridian, Wyoming, Group No. 640, was accepted December 13, 1999.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 54 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group No. 647, was accepted December 13, 1999.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subduivision of Section 5, and the metes and bounds survey of Parcel A, T. 47 N., R. 87 W., Sixth Principal Meridian, Wyoming, Group No. 651, was accepted December 13, 1999.

Dated: December 15, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–33544 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Urban Park and Recreation Recovery Program

AGENCY: National Park Service, Interior.

ACTION: Notice of FY 2000 Grant Round—UPARR Rehabilitation Grants

SUMMARY: This notice announces the availability of grant funds under the Rehabilitation phase of the Urban Park and Recreation Recovery (UPARR) Program and provides information on the application process including eligible recipients and deadlines for submission of proposals.

DATES: NPS will accept preapplications on or before March 31, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for NPS addresses.

FOR FURTHER INFORMATION CONTACT: Tom Ross, Assistant Director, Recreation and Conservation, National Park Service, Department of the Interior, 1849 ''C'' Street, N.W., Washington, D.C. 20240; (202) 565–1200.

SUPPLEMENTARY INFORMATION: For Fiscal Year 2000, Congress has appropriated $2,000,000 for the funding of projects under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95–625). By law, grants made for projects in any one State are not to exceed 15 percent of the funds appropriated. As a result NPS will consider proposals from eligible local jurisdictions for funding projects with a dollar limit equal to or less than the State limitation of $300,000 (Federal share of total project cost) under the Rehabilitation phase of the program. Preapplications must be received by the appropriate NPS field office by no later than March 31, 2000.

Rehabilitation grants will be targeted to rehabilitate existing neighborhood recreation areas and facilities which have deteriorated to the point where health and safety are endangered or the community's range of quality recreation service is impaired. Proposals must be designed to provide recreation services within a specified area identified by the applicant. Proposals may identify improvements at multiple sites or facilities, each of which must be individually addressed. Grants may be used to remodel, rebuild, or develop existing outdoor or indoor recreation areas and facilities.

Eligible Jurisdictions: Eligible urban jurisdictions as listed in 36 CFR part 72, appendix B and which have an approved Recovery Action Program (RAP) on file with and approved by NPS within the last five years will be eligible to compete for Rehabilitation grant funds. If a jurisdiction's RAP plan expired since the last Congressional appropriation for the UPARR program (FY 1995), the highest elected official of that jurisdiction may submit either (1) A new or updated RAP for NPS review

and approval, or (2) A letter of recertification. A letter of recertification (for a RAP which has expired since FY 1995) must state that no significant changes have occurred in its assessment and action plan, and that the RAP remains current as a guide to community action and decision-making. NPS may accept a recertification for a period up to two years after which a new RAP is required. Additional urban jurisdictions meeting the criteria described in 36 CFR part 72, appendix A, and having been approved as discretionary applicants by NPS, may also compete. All projects must be in accord with the priorities outlined in the approved RAPs.

Grant Implementation and Timing: Grantees must comply with all applicable Federal laws and regulations for the UPARR program, which includes completion of a final grant agreement within 120 days of a grant offer (based on NPS evaluation of preapplications submitted for consideration).

Preapplication Requirements: Local Chief Executives applying for UPARR grants will be required to certify, in the preapplication, that the grantee will comply with all requirements of the UPARR program. Applicants must certify that they have adequate control and tenure over properties to be assisted through UPARR and must identify in their applications the type of control they have over those properties. Additional requirements are outlined in the ''UPARR Preapplication Handbook'' available from the NPS field offices (or on the internet at http://www.ncrc.nps.gov/uparr).

Matching Requirements: UPARR Rehabilitation grants are awarded on a 70/30 (Federal/local) matching basis. As an incentive for state involvement in the program, the Federal Government will match, dollar for dollar, state contributions to the local share of the total project cost, up to 15 percent of the approved grant. The Federal share is limited to no more than 85 percent of the approved grant cost and the overall dollar limitations established above for Rehabilitation grants.

Pass-Through Funding: At the discretion of the applicant jurisdiction, grants may be transferred, in whole or in part, to independent general or special purpose local governments, private nonprofit agencies or community groups, and county or regional park authorities that provide recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction. In such situations, the applicant jurisdiction will bear full legal responsibility and liability for passed-through funds.

Post-Completion Requirements: In accordance with Section 1010 of the UPARR Act of 1978, assisted properties may not be converted to other than public recreation use without the prior approval of NPS and the replacement of the converted site or facility with one of reasonably equivalent usefulness and location.

FOR FURTHER INFORMATION: Interested jurisdictions should consult their NPS field office for further information including grant round schedule and for technical assistance in applying for funding. The NPS field offices are listed below:

Northeast (CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV)

Stewardship and Partnerships Team, Philadelphia Support Office, National Park Service, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, Tele: (215) 597–9195

Southeast (AL, FL, GA, KY, LA, MS, NC, PR, SC, TN, VI)

Recreation Programs, Southeast Regional Office, National Park Service, Atlanta Federal Center, 1924 Building, 100 Alabama Street, S.W., Atlanta, GA 30303, Tele: (404) 562–3175

Midwest (AR, AZ, CO, IA, IL, IN, KS, MI, MN, MO, MT, ND, NE, NM, OH, OK, SD, TX, UT, WI, WY)

Partnerships—Grants, Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102–2571, Tele: (402) 221–3358

Pacific West (AS, CA, CM, GU, HI, NV)

Planning and Partnerships Team, Pacific Great Basin Support Office, National Park Service, Suite 600, 600 Harrison Street, San Francisco, CA 94107–1372, Tele: (415) 427–1445,

(AK, ID, OR, WA)

Partnerships Programs, Columbia Cascades Support Office, National Park Service, 909 First Avenue, Seattle, WA 98104–1060, Tele: (206) 220–4126

Dated: December 21, 1999.

D. Thomas Ross,

Assistant Director, Recreation and Conservation.

[FR Doc. 99–33559 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2000 is 6.625 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1999, through and including September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law and Revenues Management Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: 303–445–2901.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 6.625 percent for fiscal year 2000.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 5.7552 percent. Rounding this average yield to the nearest one-eighth percent is 5.75 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 1999 to 2000. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.625 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 13, 1999.

Wayne O. Deason,

Assistant Director, Office of Policy.

[FR Doc. 99–33609 Filed 12–27–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336–8565.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Extension of currently approved form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 6 hours per project.

Number of Responses: 160 per year.

Federal Cost: $3,200 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: December 21, 1999.

Ralph A. Kaiser,

Senior Counsel for Administration, Department of Legal Affairs.

[FR Doc. 99–33610 Filed 12–27–99; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; COPS crime analysis units survey.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date listed at the top of this page in the **Federal Register**. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the 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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1110 Vermont Ave, NW, Washington, DC 20530–0001; attn: Karen Beckman. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, attn: Karen Beckman. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1220, 1331 G Street, NW, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Crime Analysis Units Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 034/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Representatives from police agencies with over 100 sworn personnel will be asked to respond (approximately 800). The COPS Crime Analysis Units Survey will collect basic information about the nature, extent, and quality of recipient's crime analysis capabilities.

The COPS office will use the information collected to assess whether crime analysis units provide analytic support systems that efficiently and accurately process data that define problems and help promote solutions. Data from the surveys will be used to produce a final technical report assessing the nature of crime analysis units, a summary of the findings and an easy-to-read guidebook to aid agencies in the development and enhancement of crime analysis units.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by mail to approximately 800 law enforcement agencies with sworn forces over 100. Administrative preparation and survey completion is estimated to be 0.75 hours per respondent (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 600 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy

Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, Washington Center, 1331 G Street, NW, Washington, DC 20530.

Dated: December 21, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–33549 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 4, 1999, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for product research and development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33648 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 6, 1999, and published in the **Federal Register** on August 20, 1999, (64 FR 45564), Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Guilford Pharmaceuticals to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the conpany's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33645 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–10]

Wesley G. Harline, M.D.; Continuation of Registration With Restrictions

On October 27, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Wesley Harline, M.D. (Respondent) of Ogden, Utah, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH1650248 and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that his continued registration would be inconsistent with the public interest.

By letter dated December 14, 1995, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Salt Lake City, Utah on April 1 through 3 and May 6 through 8, 1997, and by telephone in Salt Lake City and Arlington, Virginia, on August 18 through 21, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing both parties submitted proposed findings of fact, conclusions of law and argument.

In this brief, Respondent's counsel included findings based upon evidence that was not introduced at the hearing. On January 5, 1998, the Government filed a Motion to Strike Post Record Evidence from Respondent's Proposed Findings of Fact, Conclusions of Law and Argument. On January 21, 1998, Respondent filed his Opposition to Government's Motion to Strike Post Record Evidence, and in the alternative, Motion to Reopen the Record.

On April 2, 1999, Judge Bittner issued her Opinion and Recommended Ruling Findings of Fact, Conclusions of Law and Decision (Opinion), granting the Government's motion to strike the additional evidence, denying Respondent's motion to reopen the record, and recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied. On June 14, 1999, Respondent filed exceptions to Judge Bittner's Opinion and on August 2, 1999, the Government filed its response to Respondent's exceptions. Thereafter, on August 10, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

While this matter was pending with the Deputy Administrator, Respondent submitted a letter dated November 4, 1999, responding to the Government's response to his exceptions and formally moving that the record be reopened to allow additional evidence to be considered. As will be discussed more fully below, the Acting Deputy Administrator denies Respondent's motion to reopen the record and has not considered Respondent's letter dated November 4, 1999, in rendering his decision in this matter.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as

specifically noted below, the findings of fact set forth in Judge Bittner's Opinion, but does not adopt Judge Bittner's recommended conclusions of law and decision.

The Acting Deputy Administrator finds that Respondents graduated from medical school in 1945. In or about 1953, Respondent joined a general surgery practice in Ogden, Utah. He has been a licensed physician in Utah since 1953 and has held state and Federal authorizations to handle controlled substances since approximately the time he obtained his medical license. According to Respondent, sometime in the 1980s, he virtually terminated his general surgery practice to concentrate on cosmetic surgery. Respondent testified that he considered weight control to be a part of cosmetic surgery, and as of 1997, he saw 15 to 20 weight control patients every weekday and a few weight control patients on Saturdays.

Primarily at issue in this proceeding is whether Respondent properly prescribed controlled substances to his weight control patients. Therefore, provisions of Utah law relating to this issue were placed into evidence. As of 1987 [1], the Utah Administrative Code (Administrative Code) authorized the Utah Division of Occupational and Professional Licensing (DOPL) to revoke a State license to handle controlled substances if the holder ''[p]rescribes or administers any controlled substance for weight control for more than 30 days in any 12 twelve-month period.'' Utah Admin. Code R153–37–8 (1987–1988). The Administrative Code also required that ''each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.'' Utah Admin. Code R153–37–10.D (1987–1988).

The 1989 Administrative Code generally provided that:

> Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substances is utilized and information upon which the diagnosis is based.

Utah Admin. Code R153–37–.A (1989). Further, Utah Admin. Code R153–37–10.H (1989), provided that Schedule II controlled substances could not be prescribed, dispensed or administered for weight reduction or control. In addition, section 10.J essentially provided that Schedule III and IV controlled substances could only be used for weight reduction in the treatment of obesity as an adjunct, in accordance with Food and Drug Administration approved labeling for the product, and in a regimen of caloric restriction provided that among other things the prescribing practitioner determines that the patient has made good faith efforts to lose weight in a structured treatment program and the program was ineffective; obtains a thorough history; performs a thorough physical examination; and rules out any contraindications to the use of controlled substances. This section precluded the prescribing of Schedule III and IV controlled substances for weight reduction for a period longer than 12 weeks in any one year period. Also pursuant to this section, a practitioner was required to discontinue prescribing controlled substances if the patient failed to lose weight while under treatment for a period of 28 days as determined by weighing of the patient at least every fourteenth day.

In 1991, the provision was reworded slightly but essentially was substantively unchanged, and remained so until January 29, 1996. As of that date, Utah Admin. Code R156–37–604 (1996) provided that Schedule II and III controlled substances shall not be prescribed, dispensed, or administered for purposes of weight reduction or control. Further, Schedule IV controlled substances can only be used in the treatment of excessive weight when certain conditions are met. However, this provision no longer imposed the 12 week limitation on the use of Schedule IV controlled substances.

On June 5, 1992, the DOPL issued an emergency under restricting Respondent's authority to perform certain types of surgery and ordering him to cease providing overnight patient care at his facility. On September 29, 1993, a Third Amended Petition was filed in that proceeding alleging, among other things, that Respondent prescribed a Schedule III anorectic controlled substance beyond the period of time permitted by Utah regulation to at least 13 patients and that the prescriptions did not bear the full names and addresses of the patients and the dates issued as required by law.

On December 10, 1996, Respondent executed a Stipulation and Order in which he denied all of the allegations of the Third Amended Petition but agreed to various terms and conditions. Specifically, the Stipulation and Order suspended Respondent's medical license for three months, but stayed enforcement of the suspension and placed his license on a five-year probation subject to various conditions including that he provide adequate means to permit patients to exercise informed consent with respect to medical and surgical procedures, anesthesia, and medications to be administered or dispensed; meet with the Physicians' Licensing Board (Board) quarterly for five years; allow a qualified physician to review records of 1.4 percent of his patients; and maintain prescription records in accordance with State and Federal law and make his prescription records available for inspection by the board and the DOPL upon request.

In the latter half of 1995, DEA conducted a pharmacy survey to determine whether Respondent was complying the various regulatory requirements. The survey revealed that Respondent had written prescriptions for anorectic controlled substances for more than 12 weeks in a year in violation of state law. The survey further revealed seven prescriptions that Respondent issued between 1993 and 1995 and 202 prescriptions that he issued between 1990 and 1992 that did not bear the patient's full name and/or date of issuance.

Respondent testified that he had written incomplete prescriptions, but that in discussions with other physicians he had learned that such prescriptions ''are a quite frequent occurrence.'' According to Respondent, he was told by a DOPL investigator that no more than 50% of prescriptions for Schedule II, IV and V controlled substances are properly filled out.

On May 11, 1995, DOPL subpoenaed records for 43 of Respondents's patients. At issue in this proceeding is whether Respondent properly prescribed controlled substances to these patients for weight control. As a result, there was evidence presented by both the Government and Respondent regarding when an individual is considered obese or overweight, when the use of controlled substances is appropriate for weight control, and when such treatment is deemed effective. The Government offered the testimony of a physician who mainly treats chronic pain patients, but who was qualified as an expert in the legitimate use of anorectic controlled substances. Respondent testified on his own behalf and also offered the testimony of a physician whose practice prior to 1991 consisted of some weight management patients and since 1991 was solely weight management patients. Both parties offered extensive documentary evidence.

[1] The Government did not provide any evidence of the statutory provisions relating to weight control in existence prior to 1987.

Evidence was presented that different methods are used to determine when a patient is considered obese or overweight. These include comparing the patient's height and weight to charts published by insurance companies, and calculating the individual's body mass index (BMI), which is the person's weight in kilograms divided by the square of his/her height in meters. The Government's expert as well as most of the documentary evidence regarding this issue cite BMI as the best general guideline. Judge Bittner went into great detail, which will not be repeated here, summarizing the various opinions in evidence regarding at what BMI an individual is considered obese or overweight. After reviewing all of the evidence, the Acting Deputy Administrator finds that there seems to be disagreement within the medical community as to when an individual is considered obese or overweight using BMI as a guideline.

Respondent testified that his standard practice for weight control patients during the time period at issue was to use the life insurance tables, and that he was not aware of BMI as a criterion until the 1990s. He further testified that although BMI is ''helpful'' in determining whether or not to prescribe weight control medication, he found it cumbersome to use.

Judge Bittner concluded that:

> Based on my review of all the foregoing, and recognizing that there is some disagreement among the experts, I find that for purposes of this proceeding the [National Institute of Health's National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)] definitions are the most appropriate standards. I therefore find that a person aged thirty-five or older is obese if he or she has a BMI of 27 [kilograms/meters squared] or more, that person age thirty-four or younger should be considered obese if he or she has a BMI of 25 [kilograms/meters squared] or more, and that a BMI greater than 30 [kilograms/meters squared] indicates moderate to severe obesity.

The Acting Deputy Administrator disagrees with Judge Bittner that the NIDDK definitions are the most appropriate standards. The Acting Deputy Administrator finds that given the disagreement within the medical community, he is not comfortable finding that one standard is more appropriate than another. In fact the NIDDK standard that Judge Bittner cites also noted that while BMI ''is the measurement of choice for many physicians and researchers studying obesity,'' it

> poses some of the same problems as the height-for-weight tables. Doctors don't agree on the cutoff points for ''healthy'' versus ''unhealthy'' BMI ranges. BMI does not provide information on a person's percentage of body fat. However, like the height-for weight table, BMI is a useful general guideline.

Understanding Adult Obesity, NIH Publication No. 94–3680, November 1993 <http://www.niddk.nih.gov/Aobesity/adultobe.htm>.

Therefore, the Acting Deputy Administrator is reluctant to set an objective standard to determine when an individual is considered obese or overweight which might not necessarily be appropriate for each patient. Rather it appears that there are a number of different criteria that may be considered by a physician in determining whether an individual patient is obese or overweight.

Next, Judge Bittner addressed when it is appropriate to use controlled substances in a weight loss program. A consensus of the documentary evidence, as well as the testimony of both Respondent and the Government's expert, indicate that obesity is a chronic condition, and as such, using medication to treat it only for a short time is not effective. However, by virtue of the fact that the drugs at issue are controlled substances, it has already been determined that these drugs have some potential for abuse and that abuse would lead to some level of physical or psychological dependence.

The Physicians' Desk Reference (PDR) advises that these drugs should only be used for a few weeks. However, DEA has previously held that the PDR is not binding on a physician. See Paul W. Saxton, D.O., 64 FR 25, 073 (1999); Margaret E. Sarver, M.D., 61 FR 57, 896 (1996). Even the Government's expert testified that research has found that the Food and Drug Administration recommendations on which the PDR is based may be too restrictive, at least for some Schedule IV substances. The Government's expert further testified that the risks associated with the controlled substances at issue here are low and that the medications are reasonably safe drugs, but that they do have side effects and there is some potential for abuse, although low for Schedule IV substances. The Government's expert testified that the potential benefit of using controlled substances must be balanced against the potential risk.

Judge Bittner went into great detail, which will not be reiterated here, regarding the documentary evidence regarding tolerance and the abuse potential associated with anorectic controlled substances and as to their efficacy. After reviewing all of this evidence, the Acting Deputy Administrator concludes that there have been few if any meaningful studies on the long-term use of anorectic controlled substances in the treatment of weight control.

However, the Acting Deputy Administrator finds it noteworthy that in the prologue to the Anorectic Usage Guidelines adopted by the American Society of Bariatric Physicians on November 10, 1990 (1990 ASBP Prologue) it was reported that the reported incidence of serious side effects of Schedule III and IV anorectics ''is low indeed.'' The 1990 ASBP Prologue also stated, among other things, that short and long term studies have not documented concerns about the abuse potential of anorectics, and that a significant number of bariatric physicians reported that they maintained patients on anorectics for long periods of time without significant ill effects. The 1990 ASBP Guidelines stated that Schedule III and IV anorectics ''can often be useful in helping patients to lose weight and to maintain a reduced weight,'' and that these medications ''by definition have a low level of risk and little potential for addiction or psychologic dependence when carefully used by a physician in a properly supervised medical practice.''

The Acting Deputy Administrator also finds it significant that in a 1996 article,[2] the National Task Force on the Prevention and Treatment of Obesity (National Task Force) advised that obesity is likely to require continued treatment, and that therefore drug treatments for only weeks or months is generally not warranted. The National Task Force warned that drug treatment might need to continue for years, even for the patient's lifetime, but that there were few published studies in which patients received these drugs for more than a year. Consequently, the Acting Deputy Administrator is reluctant to find that long-term use of anorectic controlled substances is inappropriate.

Judge Bittner next addressed the criteria for an appropriate weight loss program utilizing controlled substances. The Government's expert and the documentary evidence suggest that controlled substances should only be used as part of an overall program including dietary modification, behavioral instruction and exercise. The Government's expert emphasized that the key determinant of a weight loss program's efficacy is whether the weight

[2] National Task Force on the Prevention and Treatment of Obesity, Long-term Pharmacotherapy in the Management of Obesity, 276 JAMA 1907 (1996).

loss improves the patient's health. It was the opinion of the Government's expert that it is not appropriate to use controlled substances for weight loss in order to enhance a patient's self-image or for prophylactic use, for instance if other members of a patient's family are overweight. According to the Government's expert it is not appropriate to prescribe controlled substances for cosmetic purposes.

Respondent testified that in determining whether to prescribe medications for weight control he considered the patient's feelings about him or herself, whether he or she wanted to lose weight, how much the patient wanted to lose, and whether it was feasible for the patient to do so.

The Government's expert testified that a weight loss of at least 10% is considered a good sustained weight loss. Other evidence in the record indicates that some believe that a weight loss as low as 5% is considered good. The Government's expert testified that once a 10% weight loss has been achieved, that does not necessarily mean that controlled substances should be discontinued because the medication helps prevent regaining weight loss. But the expert further testified that there needs to be an ongoing review process to assess the efficacy of the use of controlled substances.

Judge Bittner went into great detail summarizing the documentary evidence relating to the criteria for determining when controlled substances should be utilized in a weight control program. After considering all of the evidence the Acting Deputy Administrator concludes that there appears to be a difference of opinion within the medical community as to when it is appropriate to use controlled substances in a weight management program and when such use is considered effective.

The Acting Deputy Administrator finds it significant that the 1990 ASBP Guidelines specify that the guidelines,

> provide suggestions regarding the use of the anorectics but they are not intended to and indeed cannot, replace the individual judgment of the treating bariatrician which remains and must remain paramount. Thus, the bariatrician must not rely on these guidelines, or on any other guidelines to provide an infallible blueprint for patient treatment. It is not the intent of these guidelines to limit the bariatricians' right to adjust the therapy based on the patient's condition, medical problems or therapeutic response.

The Government's expert testified that this statement should be interpreted in the context of a clear-cut treatment program with established goals.

Judge Bittner concluded that

> [i]n light of my findings above as to when a person should be considered obese, I further find that anorectic controlled substances should not be used in the treatment of a patient unless the individual is thirty-five or more years of age and has a BMI of at least 27 [kilograms/meters squared], or, if younger than thirty-five years of age, has a BMI of 25 [kilograms/meters squared] or more. I especially note that the evidence establishes that prescribing controlled substances to a patient for cosmetic purposes is not within the scope of legitimate medical practice.
>
> * * * Based on my review of the record and for purposes of this proceeding, I find that it is appropriate to continue prescribing anorectic controlled substances to those patients who initially are candidates for such treatment only if (a) the patient achieves a loss of five percent of body weight or a reduction in BMI by one or more units and maintains that loss for at least one year, or (b) if the patient achieves a significant clinical response as defined in the 1990 ASBP Guidelines, *i.e.,* (1) a loss of at least twelve pounds over the initial twelve weeks, and (2) a loss of at least four pounds for each additional four weeks of treatment, providing that if the patient has lost at least ten percent of his or her initial body weight, he or she may be considered to have reached [90% Target Weight] and may appropriately continue to be prescribed anorectics if needed. If the patient gains weight and exceeds that benchmark, the physician should cease prescribing the medications unless the patient again achieves the [90% Target Weight] benchmark in a period of time equaling one week for each pound above the benchmark. (Footnotes omitted).

The Acting Deputy Administrator disagrees with these findings. There appears to be differing opinions within the medical community as to when it is appropriate to use controlled substances in weight management treatment and when such use is considered effective. As a result, the Acting Deputy Administrator is not comfortable setting objective standards which might not necessarily be appropriate for each individual patient.

As to the 42 patients at issue in this proceeding, Judge Bittner went into great detail in her Opinion regarding their history of treatment with Respondent. She discussed the patient charts and patient summaries in evidence, the assessment of the Government's expert of each patient, Respondent's testimony regarding each patient, and the patient interviews conducted by DEA and/or the patients' testimony. Since the Acting Deputy Administrator is adopting Judge Bittner's findings of fact except as specifically noted, there is no need for him to reiterate them. It should be noted that based upon the Acting Deputy Administrator's rejection of certain of Judge Bittner's findings as noted above, the Acting Deputy Administrator does not adopt any of Judge Bittner's findings regarding specific patients that use her objective standard to conclude the treatment with controlled substances was inappropriate or to assess whether or not treatment was successful.

The Acting Deputy Administrator makes the following general findings regarding Respondent's treatment of the patients at issue. These patients were all being treated by Respondent for weight loss or management. There is no evidence that anorectic controlled substances were prescribed for other purposes, or that controlled substances received pursuant to Respondent's prescriptions were sold or in any other way diverted from the patients' use.

On the initial visit, the patient would be weighed, his/her height would be measured and blood pressure taken. A family/medical history would be taken and Respondent would perform a physical examination. Respondent would discuss goals and a target weight with the patient, give the patient a generalized diet, generally discuss exercise, lifestyle changes, and possible side effects of the controlled substances, and ask whether the patient had previously attempted to lose weight and by what methods.

Thereafter, Respondent would see the patient no more than once a month. In fact, several patients testified that they had tried to obtain their prescriptions earlier because they were going on vacation, but their requests were refused. At each visit the patient would be weighed and his/her blood pressure taken. The patient would always be seen by Respondent before any controlled substances would be prescribed. Respondent would admonish the patient if he/she were not losing weight. If the patient was not losing weight, Respondent would very rarely change the diet he had provided the patient because according to Respondent, more likely than not the patient was not following the diet. Respondent would remind the patient on follow-up visits of the importance of following the diet.

Respondent testified that he used the insurance company height and weight tables to determine whether to use controlled substances in the treatment of a patient. However, he also testified that he is now stricter in his approach to weight control treatment.

Respondent's office manager testified that although a patient's blood pressure was taken at each visit, the result was not always noted in the patient's chart unless it was abnormal. Respondent testified that he might not always note the responses to the medical/family history questions or the results of the

physical examination in the patient's chart if the responses and/or findings were normal.

For the most part, the charts for the patients at issue here not do indicate the patient's target weight, medical history, or results of physical examinations, nor do the charts indicate whether the patient previously saw another physician for weight control or was ever enrolled in a formal weight control program. Also, for the most part, there is no indication in the charts that Respondent gave the patient diet or exercise information on an initial or subsequent visit, or that Respondent subsequently discussed these subjects with the patient or modified the recommended diet and exercise regimens. Also there were several instances where controlled substances were prescribed by Respondent but not noted in the patient charts. In addition, a number of the patients were prescribed benzodiazepines for extended periods of time with no reason for these prescriptions noted in the charts.

The Government's expert testified that Respondent's patient records did not comply with Utah requirements regarding patient histories and physical examinations, and characterized Respondent's records as ''grossly deficient * * * in terms of the evaluation of the patients.'' According to the Government's expert, as far as the patient records show, ''the patients came in, were weighed, were given a prescription and left * * * That's all you can tell from the records. This isn't saying other things weren't done, but certainly they weren't documented if they were.''

Respondent testified that the medical records in evidence as Government exhibits were incomplete, and included only his handwritten notes, not all of the information in the patient charts, and that these notes were the only portions of the charts that DEA investigators asked his staff to copy. However as Judge Bittner pointed out, Respondent did not object when the Government offered the charts into evidence, did not request that the Government be required to introduce other documents at that time, and did not offer the complete charts as his own exhibits. Regarding the benzodiazepine prescriptions, while the reasons for the prescriptions were not noted in the charts, Respondent and the patients who testified were able to give explanations for the prescriptions. Nonetheless, Respondent admitted at the hearing that his patient records were not as good as they could have been.

Respondent also admitted that with respect to all 42 patients at issue in this proceeding, he violated Utah law in existence at the time that limited the prescribing of Schedule III and IV anorectic controlled substances to no more than 12 weeks in a one-year period (12-week rule). Respondent testified that he did not agree with Utah's pre-1996 restriction because a weight control program for 12 weeks is not feasible and that the rule was not in the mainstream of medicine. According to Respondent, ''I thought I was still in the mainstream of medicine, because most of my colleagues were violating the 12-week rule and certainly all of the drugstores were.'' Respondent asserted that ''that doesn't make me any less guilty, but it explains why I did it.'' Respondent testified that he should not have disobeyed the law but he felt that it was in the best interest of his patients. He further testified that his patients have been inconvenienced and embarrassed by their involvement in these proceedings, and that his health has suffered and he has been financially burdened due to his violation of the law.

In general, the Government's expert opined that it did not appear that Respondent monitored the patients' treatment; that the patient interviews failed to show the Respondent used any behavior therapy; that many of Respondent's patients did not qualify as candidates for treatment with anorectic controlled substances ''under any definition,'' and that it did not appear that Respondent placed his patients on structured diet and exercise programs. The Government's expert testified that the lack of documentation in the patient charts raised questions about the quality of care that Respondent provided these patients.

For the most part, the Government's expert concluded that Respondent's treatment of the patients at issue with controlled substances was not appropriate. Respondent admitted that his treatment of 10 of the patients was a failure. However, even the Government's expert conceded that Respondent's treatment of several of the patients was successful and he characterized Respondent's treatment of several others as minimally effective.

Respondent's treatment of one patient is of particular concern. From January 1993 to May 1995, the patient was prescribed Nardil, a non-controlled antidepressant, as well as anorectic controlled substances. The Government's expert characterized Nardil as a ''fairly dangerous medication,'' that is typically prescribed by psychiatrists. According to the Government's expert, even many psychiatrists are reluctant to prescribe Nardil because it interacts with a number of other drugs, particularly anorectics, and some foods which can lead to life threatening side effects. At the hearing in this matter, Respondent conceded that he made a mistake and should not have prescribed Nardil for this patient.

At the hearing in this matter, Respondent testified that he did not know when he became aware of the 12-week rule. He further testified that he was not aware of the change in Utah law effective January 16, 1996, which prohibited the prescribing of Schedule III controlled substances for weight control and which eliminated the 12-week rule for Schedule IV controlled substances, until he was personally advised of this change by a DOPL inspector in February 1996. A pharmacy survey revealed that Respondent had issued 16 prescriptions for Schedule III anorectics after the effective date of the law prohibiting such prescribing but before he was advised of the change in the law by the DOPL inspector.

There was also an allegation raised at the hearing that Respondent authorized a pharmacy to change a prescription that he had written on March 12, 1996 for a Schedule IV controlled substance to a Schedule III controlled substance. A DOPL investigator testified that a pharmacy technician indicated that the patient requested the change and the pharmacy technician had gotten approval from someone at Respondent's office. Respondent testified that the individual at his office did not recall giving the pharmacy technician authorization to change the prescription. Respondent further testified that ''I'm not stupid. I have been notified months previous that this was no longer a drug that we prescribed,'' and that he would not have authorized such a change.

Evidence was presented by Respondent regarding his practice as of the date of the hearing. Respondent testified that his patient charts have been ''up to speed'' from the time he entered into the agreement with the state to undergo peer review. Also as of August 1997, he follows procedures specified in a document that was prepared with the assistance of counsel which includes a checklist for the physician on the initial consult, a medical history form, an informed consent form, and a follow-up consultation questionnaire. These forms all remain as part of each patient's permanent record. Respondent's office manager testified that weight control patients are now given a handbook

which includes information on diet, exercise, and medication. Respondent testified that he is now complying with all State, Federal and local laws pertaining to controlled substances and would never violate a regulation in the future.

In this brief filed after the conclusion of the hearing, Respondent's counsel sought to introduce and rely upon evidence not admitted at the hearing. Respondent's counsel attached and discussed in his brief a letter dated October 2, 1997, from a physician who stated that he had conducted a random sampling of Respondent's charts for weight control patients. In a motion filed on January 5, 1998, the Government objected to consideration of this information arguing that Respondent did not move to reopen the record to receive additional evidence, and even if he had, the record should not be reopened because Respondent has not demonstrated that the evidence was previously unavailable and is material and relevant. See Robert M. Golden, M.D., 61 FR 24,808 (1996). Further the Government asserted that at most, the letter shows that Respondent is complying with his probationary requirements with the Board, which is presumed, and that the letter raises issues of fact that would require further testimony and documentary evidence in this proceeding. On January 21, 1998, Respondent filed his opposition to the Government's motion in which he moved to reopen the record and argued that the letter meets the standard for reopening the record.

In her opinion, Judge Bittner granted the Government's motion to strike from Respondent's brief the October 2, 1997 letter and references to it. Judge Bittner found that to appropriately evaluate the assertions in the October 2, 1997 letter the record would have to be reopened for additional testimony and documentary evidence. Judge Bittner further found that this is not warranted since, ''the most the letter adds to the record is an indication that Respondent is complying with his probation; [and] as the Government asserts, such compliance is presumed.''

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16, 422 (1989).

Regarding factor one, Judge Bittner noted that Respondent entered into a Stipulation and Order with the DOPL in December 1996, but no restrictions were imposed on his state authorization to handle controlled substances. Judge Bittner concluded however, that ''inasmuch as State licensure is a necessary but not sufficient condition for DEA registration, this factor is not dispositive.'' In his exceptions to Judge Bittner's opinion, Respondent contended that the state ''is in the best position to judge Respondent's fitness to practice.'' Respondent argued that it is ''unfair and excessively punitive'' for DEA to seek to take action against Respondent above and beyond that taken by the state. The Acting Deputy Administrator notes that the recommendation of the appropriate state licensing authority is but one factor to be considered in determining the public interest. However in this case, the Acting Deputy Administrator does find it significant that Utah did not restrict Respondent's ability to handle controlled substances after reviewing Respondent's treatment of his weight control patients, his documentation in his patient charts, and his failure to include all required information on controlled substance prescriptions.

As to factor two, Judge Bittner found that Respondent prescribed the patients at issue anorectic controlled substances for anywhere from a few months to twenty years, and that the vast majority were prescribed Schedule III controlled substances. Judge Bittner noted that ''[a]lthough Respondent introduced evidence on the long-term use of some Schedule IV medications, the record is devoid of such evidence with respect to Schedule III anorectics.'' Judge Bittner evaluated the treatment of these 42 patients and concluded that

> Respondent's treatment of all forty-two patients whose records are in evidence was inappropriate because he did not provide the comprehensive program required by good medical practice. In addition, twenty-six of the patients were not sufficiently overweight to justify treatment with controlled substances at the outset and eight of these became obese while taking the medications. Of the sixteen patients who may initially have been candidates for treatment with anorectic controlled substances, ten did not achieve a weight loss that met the standard of efficacy stated above.

Judge Bittner also found it significant that Respondent prescribed benzodiazepines to 14 patients for substantial periods of time without documenting the reasons for the prescriptions in the patient charts. As a result, Judge Bittner ''conclude[d] that this factor weighs strongly in favor of a finding that Respondent's continued registration would not be in the public interest.''

The Acting Deputy Administrator finds that it does seem like Respondent issued a large number of prescriptions for anorectic controlled substances to the majority of these patients. However, the Acting Deputy Administrator cannot find that Respondent's prescribing was inappropriate. While the record is devoid of much evidence regarding the long-term use of Schedule III anorectics, the Acting Deputy Administrator is reluctant to find that such prescribing is inappropriate. In evaluating this case, it is apparent that there is a variety of opinions within the medical community as to when a person is considered obese or overweight and when it is appropriate to use controlled substances in the treatment of weight control.

DEA has been faced with an analogous situation when it sought to determine whether physician's prescribing for chronic pain patients was appropriate. In one recent case, the then-Deputy Administrator quoted the Administrative Law Judge who stated that ''DEA is in a difficult position, for it is asked to determine appropriate prescribing practices in a treatment area in which the medical profession is not in accord * * *'' Paul W. Saxton, D.O., 64 FR 25, 073 (1999). DEA has previously held that it is not DEA's role to resolve this disagreement. In William F. Skinner, M.D., 60 FR 62, 887 (1995), the then-Deputy Administrator found that, ''the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of

controlled substances in the treatment of chronic pain patients * * *. It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law.''

As previously noted, the Acting Deputy Administrator does not agree with Judge Bittner's conclusion that a person is obese or overweight at a set BMI. While it is true that there is evidence in the record that BMI is a good, if not the best, measure of obesity, there are still other guidelines that may be considered. In addition there is conflicting evidence in the record as to when it is appropriate to use controlled substances. Consequently, the Acting Deputy Administrator finds that it is not DEA's role to resolve these differences and set the standard for the medical community. This is not to say that physicians have free reign to prescribe anorectic controlled substances for non-legitimate reasons. But in this case, all of the patients at issue were seeking to control their weight and there is no evidence in the record that the controlled substances were diverted from this purpose.

While one might argue that Respondent did not individualize the treatment for these patients as the evidence suggests is appropriate, Respondent did meet with the patients before prescribing controlled substances and when necessary would discuss diet and exercise with the patients. On some occasions, Respondent would cease treatment when the patient failed to follow Respondent's weight control program. Judge Bittner took issue with the amount of time Respondent spent with the patients saying that it was not sufficient to provide individualized therapy. However, the Acting Deputy Administrator is not in a position to find whether the amount of time spent with the patients was sufficient since no evidence was presented as to what is considered an appropriate amount of time.

As for Respondent's prescribing of benzodiazepines for extended periods of time to some of these patients, it is true that Respondent may not have documented his reasons for these prescriptions in the patient charts. However, at the hearing, Respondent and some of these patients testified as to why these controlled substances were prescribed. The Acting Deputy Administrator concludes that he cannot find that these prescriptions were inappropriate based on the fact that the reasons for the prescriptions were not noted in the patients charts.

The Acting Deputy Administrator finds that Respondent's prescribing of Nardil along with anorectic controlled substances to one patient was inappropriate. However, this is the only example of Respondent prescribing contraindicated drugs, and Respondent has admitted that he was wrong in so doing.

Regarding factor three, there is no evidence that Respondent has been convicted of any criminal charges under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

As to factor four, Respondent's compliance with applicable laws, Respondent has admitted that he violated Utah law with respect to the 42 patients at issue in this proceeding by prescribing anorectic controlled substances to them for more than 12 weeks in a one year period and by failing to properly document his treatment of these patients in their charts. The Acting Deputy Administrator does not find that Respondent violated 21 CFR 1306.04, which states that controlled substances may only be prescribed for a legitimate medical purpose. As discussed above, given the difference of opinion in the medical community, the Acting Deputy Administrator cannot find that Respondent issued controlled substance prescriptions to the patients at issue for no legitimate medical purpose.

As to factor five, Judge Bittner concluded that Respondent did not provide adequate assurances that he would properly document the treatment of his patients in their charts. However, the Acting Deputy Administrator finds that pursuant to the Stipulation and Order with the state, Respondent's patient charts are currently reviewed on a periodic basis for completeness. As a result the Acting Deputy Administrator finds that Respondent's documentation will be sufficiently monitored. Judge Bittner also concluded that Respondent showed no remorse for his violations of Utah law and continued to assert that despite the medical evidence to the contrary, there was no need to individualize the diet and exercise programs, and that behavioral counseling would be useless. The Acting Deputy Administrator finds that Respondent did show some remorse for his violation of state law and indicated that he acknowledged that what he did was wrong and he would not violate the law in the future. The Acting Deputy Administrator also finds that while Respondent appears reluctant to individualize his weight loss treatment programs as suggested by the medical literature, this does not warrant revocation of his DEA registration.

Judge Bittner concluded ''that the record as a whole establishes that Respondent is unwilling or unable to accept the responsibilities inherent in holding a DEA registration.'' As a result, Judge Bittner concluded that Respondent's continued registration would be inconsistent with the public interest and recommended that Respondent's DEA registration be revoked.

Respondent filed exceptions to Judge Bittner's Opinion and the Government filed a response to Respondent's exceptions which have all been considered by the Acting Deputy Administrator in rendering his decision in this matter. Most of the arguments set forth in these filings have already been addressed in this final order, or it is not necessary to address them in light of the findings of the Acting Deputy Administrator. However, Respondent does argue in his exceptions that Judge Bittner erroneously excluded the October 2, 1997 report of the physician who reviewed Respondent's charts pursuant to the terms of the Stipulation and Order with the state. In its response to Respondent's exceptions, the Government argues that Judge Bittner properly excluded the report since it added nothing to the record in this matter and in order to properly assess the value of the report, the reviewing physician would need to testify and be subjected to cross-examination. This issue will be discussed below.

On August 10, 1999, the record in this matter was transmitted to the Deputy Administrator. On November 4, 1999, Respondent sent a letter to the Deputy Administrator responding to the Government's response to his exceptions and attaching seven reports from the physician who reviewed Respondent's patient charts pursuant to the Stipulation and Order that were generated between October 2, 1997 and September 2, 1999. Respondent recognized that such a filing is not provided for in the regulations, but argued that consideration of it is necessary ''to avoid a gross miscarriage of justice.'' In addition, Respondent filed a formal motion to reopen the record.

The Acting Deputy Administrator finds that Judge Bittner should have reopened the record to allow Respondent to introduce into evidence the October 2, 1997 report from the reviewing physician and to provide the Government with an opportunity to cross-examine the physician and/or introduce rebuttal evidence. Clearly, this report was not available to

Respondent until October 2, 1997, after the conclusion of the hearing in this matter. In addition, the Acting Deputy Administrator finds that this report is clearly material and relevant to the issue in this proceeding. Both Government counsel and Judge Bittner state that the report merely shows that Respondent is complying with the state's Stipulation and Order, which is presumed. However, the Acting Deputy Administrator finds that this report also shows the extent of Respondent's compliance. The issue in this proceeding is whether Respondent's continued registration is inconsistent with the public interest. The state of Respondent's current practice is clearly relevant and this information was not available until after the conclusion of the hearing.

Nonetheless, the Acting Deputy Administrator has decided to deny Respondent's matter to the Administrative Law Judge and has further decided not to remand this matter to the Administrative Law Judge and has further decided to deny Respondent's request to reopen the record dated November 4, 1999, to introduce the October 2, 1997 report of the reviewing physician as well as six subsequent reports. As the Government has stated, in order to admit these reports for reconsideration, the Government would need to be provided with an opportunity to cross-examine the reviewing physician and to possibly introduce rebuttal evidence, which would delay a final decision in this matter. In light of the findings and conclusions set forth in the final order, the Acting Deputy Administrator does not believe that Respondent would want to delay issuance of this decision. Therefore, the seven reports of the reviewing physician attached to Respondent's November 4, 1999 letter have not been considered by the Acting Deputy Administrator in rendering his decision in this matter.

The Acting Deputy Administrator has not considered the other statements made by Respondent in the November 4, 1999 letter. First, such a filing is not permitted by the regulations, and second, they merely reiterate arguments already made by Respondent in his brief and exceptions.

After reviewing the entire record in this matter, the Acting Deputy Administrator concludes that revocation of Respondent's DEA Certificate of Registration is not warranted. The Acting Deputy Administrator does not find that the patients at issue in this proceeding were prescribed controlled substances for no legitimate medical purpose. While Respondent may not have been as careful in prescribing controlled substances and in documenting the reasons for his prescribing, the Acting Deputy Administrator does not believe that revocation is appropriate given the dispute within the medical community as to when it is proper to use controlled substances in weight control.

However, Respondent clearly violated state law by ignoring the 12-week rule and by failing to properly document the treatment of his patients. The Acting Deputy Administrator does not condone Respondent's defiance of state law, but the Acting Deputy Administrator finds it noteworthy that the state is currently monitoring Respondent's treatment of patients and documentation of this treatment; that the state did not restrict Respondent's ability to handle controlled substances based upon the same patient charts in evidence in this proceeding; and that Respondent has taken remedial steps to ensure that he practices in compliance with the law.

But given Respondent's admitted defiance of state law by ignoring the 12-week limitation on prescribing controlled substances for weight control that was in effect at the time of the events at issue, the Acting Deputy Administrator finds that some controls are necessary to ensure that Respondent properly handles controlled substances in the future. Therefore, for two years from the effective date of this final order Respondent shall: (1) Forward to the DEA Salt Lake City office copies of the reports of the physician reviewing his charts pursuant to the Consent Order with the State of Utah; and (2) consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH1650248, previously issued to Wesley G. Harline, M.D., be and it hereby is continued, and subject to the above described restrictions. This order is effective January 27, 2000.

Dated: December 9, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33644 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 9, 1999, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objectives may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33649 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 21, 1999, Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II

Drug	Schedule
Diphenoxylate (9170)	II

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33650 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 15, 1999, Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02451, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2, 5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk 2, 5-dimethoxyamphetamine for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 28, 2000.

Dated: December 13, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33647 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998, (63 FR 71160), Pressure Chemical Company, 3419 Spellman Street, Pittsburgh, Pennsylvania 15201, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to bulk manufacture 2,5-dimethoxyamphetamine for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Pressure Chemical Company to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated the company to ensure that the company's continued registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33646 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA No. 1861]

Controlled Substances: Established Initial Aggregate Production Quotas for 2000

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2000.

SUMMARY: This notice establishes initial 2000 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The 2000 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2000 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On October 21, 1999, a notice of the proposed initial 2000 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (64 FR 56809). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 22, 1999.

Six companies commented on a total of 16 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate

production quotas for alfentanil, amphetamine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methamphetamine (for sale), methamphetamine (for conversion), methylphenidate, noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), sufentanil and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

In addition, one comment was received after the published comment period had ended. This comment requested that the aggregate production quota for dihydromorphine be increased to provide for an intermediate in a current manufacturing process. This comment was taken into consideration in determining the established initial 2000 aggregate production quota for dihydromorphine.

DEA has taken into consideration the above comments along with the relevant 1999 manufacdturing quotas, current 1999 sales and inventories, 2000 export requirements and research and product development requirements. Based on this information, the DEA has adjusted the initial aggregate production quotas for alfentanil, dihydromorphine, diphenoxylate, fentanyl, hydromorphone, levorphanol, meperidine, levo-desoxyephedrine, methamphetamine (for conversion), noroxymorphone (for conversion), oxycodone (for sale), sufentanil and thebaine to meet the legitimate needs of the United States. Significant portions of the increases for alfentanil, diphenoxylate,, fentanyl, hydromorphone, levorphanol, noroxymorphone (for conversion) and sufentanil are due to a change in the manner in which manufacturing losses are accounted for by a bulk manufacturer.

In addition, one company requested a hearing to address the aggregate production quota for oxycodone (for sale) or hydromorphone if the aggregate production quotas were not increased sufficiently. The DA, based on the date provided, has increased the aggregate production quotas for both oxycodone (for sale) and hydromorphone and has determined that a hearing is not necessary.

Regarding amphetamine, methamphetamine (for sale), methylphenidate and oxycodone (for conversion), the DEA has determined that the proposed initial 2000 aggregate production quotas are sufficient to meet the current 2000 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2000, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1999 year-end inventory and actual 1999 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the 2000 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 2000 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	10,001,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	14
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	20
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30
3,4-Methylenedioxymethamphetamine (MDMA)	20
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	201,000
4-Methylaminoex	3
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-Methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	7
Allylprodine	2
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	7
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Diethyltryptamine	2

Basic class	Established initial 2000 quotas
Difenoxin	10,000
Dihydromorphine	508,000
Dimethyltryptamine	3
Heroin	2
Hydroxypethidine	2
Lysergic acid diethylamide (LDS)	38
Mescaline	7
Methaqualone	17
Methcathinone	9
Morphine-N-oxide	2
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	101,000
Thiofentanyl	2
Trimeperidine	2
Schedule II:	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	8,000
Alphaprodine	2
Amobarbital	12
Amphetamine	9,007,000
Cocaine	251,000
Codeine (for sale)	54,504,000
Codeine (for conversion)	52,384,000
Dextropropoxyphene	114,078,000
Dihydrocodeine	268,000
Diphenoxylate	931,000
Ecgonine	36,000
Ethylmorphine	12
Fentanyl	300,000
Glutethimide	2
Hydrocodone (for sale)	20,208,000
Hydrocodone (for conversion)	20,700,000
Hydromorphone	1,239,000
Hydrocodone (For conversion)	20,700,000
Hydromorphone	1,239,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	201,000
Levomethorphan	2
Levorphanol	27,000
Meperidine	11,335,000
Metazocine	1
Methadone (for sale)	8,347,000
Methadone (for conversion)	600,000
Methadone Intermediate	9,503,000
Methamphetamine	2,049,000
750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,225,000 grams for methamphetamine for conversion to a Schedule III product; and 74,000 grams for methamphetamine (for sale)	
Methylphenidate	14,957,000
Morphine (for sale)	14,706,000
Morphine (for conversion)	97,160,000
Nabilone	2
Noroxymorphone (for sale)	25,000
Noroxymorphone (for conversion)	3,813,000
Opium	720,000
Oxycodone (for sale)	29,826,000
Oxycodone (for conversion)	271,000
Oxymorphone	166,000
Pentobarbital	22,037,000
Phencyclidine	41
Phenmetrazine	2

Basic class	Established initial 2000 quotas
Phenylacetone	10
Secobarbital	22
Sufentanil	1,700
Thebaine	41,300,000

The Acting Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that his matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: December 21, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33550 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Telecommunications Contracts and Audit Unit; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, with changes, of a previously approved collection for which approval has expired; Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice, Federal Bureau of Investigation, Telecommunications Contracts and Audit Unit (TCAU), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 7, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 90 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Porter F. Dunn, (703) 814–4902, Federal Bureau of Investigation, TCAU, 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Reinstatement, with changes of a previously approved collection for which approval has expired.

(2) *Tile of the Form/Collection:* Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. This rule establishes the procedures whereby telecommunications carriers can recover the costs associated with complying with the Communications Assistance for Law Enforcement Act, which went into effect on October 25, 1994.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 3,000 respondents to provide the information requested is approximately four hours per telecommunications switch.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information necessary to file a claim under the Cost Recovery Regulation is approximately 46,000 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States

Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: December 21, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–33668 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

CALEA Implementation Section; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection, flexible deployment assistance guide.

The Department of Justice, Federal Bureau of Investigation, Communications Assistance for Law Enforcement Act (CALEA) Implementation Section, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 7, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Catherine Kudrick, (703) 814–4835, Federal Bureau of Investigation, CALEA Implementation Section, 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Flexible Deployment Assistance Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Flexible Deployment Assistance Guide has been developed to assist the telecommunications industry in meeting its obligations under the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 5,000 respondents to provide the information requested is approximately four hours and fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested by the Flexible Deployment Assistance Guide is approximately 21,250 annual burden hours.

If the additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Dated: December 21, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–33669 Filed 12–27–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In order with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–96,688 & A; Woodward Governor Co., Loveland, CO, Industrial Controls Group, Fort Collins, CO

TA–W–36,672; Range Production, Div. of Range Resources, Fairview, OK

TA–W–36,714 & A; International Playing Card and Label, Inc., Rogersville, TN and Surgoinsville, TN

TA–W–36,979; Omco Mould, Inc., Winchester, IN

TA–W–36,988; Siebe Automotive, Robershaw Div., Carthage, TN

TA–W–36,043; Acordis Cellulosic Fibers, Inc., Rayon Plant, Axis, AL

TA–W–36,819; Mississippi Rags, Meridian, MS

TA–W–36,801 & A; Case Corp., Racine Tractor/Foundry, Racine Transmission Plant, Racine, WI amd East Moline, East Moline, IL
TA–W–36,985; SMF, Inc., #2 Heavy Fabrication Div., Danville, IL
TA–W–36,762; Risco Products, Inc., Crescent Brick Div., East Canton, OH
TA–W–36,348; UNIFI, Inc., Plant 10, UNIFI Textured Polyester Div., Mayodan, NC
TA–W–36,654; Milacron Resin Abrasives, Carlisle, PA
TA–W–36,789; Darex Corp., Ashland, OR
TA–W–36,270; Applied Molded Products, Watertown, WI
TA–W–36,946; Tektronix, Inc., Video and Networking Div., Beaverton, OR
TA–W–36,932; P and M Cedar Products, Redding, CA, A; McCloud, CA, B; Pioneer, CA and C; Roseburg, OR
TA–W–36,518; The Turner and Seymour Manufacturing Co., Foundry Div., Torrington, CT
TA–W–36,693; Rexell Industries, Inc., Gaylord, MI
TA–W–36,890; Crown Products Div. of Sommer Metalcraft Corp., Indianapolis, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,061; Big ''B'' Valve, Inc., Laurel, MS
TA–W–37,123; Midland County Housing Authority, Midland, TX
TA–W–37,047; Marathon Ashland Pipeline LLC, Bridgeport, IL
TA–W–37,055; Cross Oilwell Service, ad/b/a Cross Supply, Olney, IL
TA–W–37,108; UMETCO Minerals Corp, Gas Hills, WY
TA–W–37,097; Reliable Machine & Supply Co., Inc., Odessa, TX
TA–W–37,051; G.L. Trucking & Rental, Inc., Williston, ND
TA–W–37,093; Duck Head Apparel Co., Monroe, GA
TA–W–37,092; Industrial Motor and Control, El Paso, TX
TA–W–36,616; The Investext Group, A Div. of Thompson Information Service, Inc., Boston, MA
TA–W–37,048; Jackpot Owl, Inc. d/b/a The Owl Club, Battle Mountain, NV
TA–W–36,968; Pride Companies L.P., Pride Pipeline Co., Abilene, TX
TA–W–36,816; Barrick Bullfrog, Inc., Bullfrog Mine, Beatty, NV

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,069; Conagra Grocery Products Co., Perryburg, OH
TA–W–36,964; Smithkline Beecham Pharmaceuticals, Piscataway, NJ
TA–W–37,072; Jim Strickland Production Service, Tyler, TX
TA–W–36,787; Siemens Westinghouse Power Corp., Northeast Service Center, Glassport, PA
TA–W–36,916; General Electric Service Center, Tucson, AZ
TA–W–37,056; Alcoa Technical Center, Manufacturing Center, #478, Alcoa Center, PA
TA–W–36,965 & A; Dura Automotive Systems, Inc., Engineered Components, Manchester, MI and Romulus, MI
TA–W–36,737; Sikorsky Aircraft, Stratford, CT, A; Bridgeport, CT, B; Shelton, CT, C; West Haven, CT, D; West Palm Beach FL, and E; Troy, AL
TA–W–36,986; Matsushita Home Appliance Co., Winchester, KY
TA–W–36,844; Valley Recreation Products, Inc., Sycamore, IL
TA–W–37,053; Long-Airdox Co., Pulaski, VA
TA–W–37,010; Raytheon Systems Corp., Orangeburg, SC
TA–W–37,077; Hutchinson Technology, Inc., Hutchinson, MN
TA–W–37,000; Barry Callebaut USA, Inc., Van Leer Div., Jersey City, NJ
TA–W–36,989; Mobile Energy Service Co., Mobile, AL
TA–W–36,575; Landmark Graphics Corp., Houston, TX, A; Austin, TX, B; Dallas, TX, C; Englewood CO and D; New Orleans, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,098; Cedarapids, Inc., Standard Havens-Asphalt Machinery Manufacturing Div., Glasgow, MO
TA–W–36,808; Ingersoll-Rand Co., Architectural Hardware Div., Greendale, WI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–36,839; Oremet Wah Chang, Albany, OR

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–36,930; Houze Glass Co., Point Marion, PA
TA–W–37,025; Exxon Corp., Houston, TX
TA–W–36,838; BP Amoco, Whiting, IN
TA–W–37,028; Perma Cote Industries, Lemont Furnace, PA
TA–W–36,781; Armco, Inc., Mansfield, OH

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determination For Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,039; Tellotson Healthcare Crop., North Rochest, NH: October 28, 1998.
TA–W–36,759 & A; The Worcester Co., North Providence, RI and New York, NY: August 17, 1998.
TA–W–36,943; Seco/Warwick Corp., Meadville, PA: September 24, 1998.
TA–W–37,049; Sand Creek Chemical Limited Partnership, Commerce City, CO: October 25, 1998.
TA–W–36,854; China Grove Textiles, Inc., Arlington Plant, Gastonia, NC: September 9, 1998.
TA–W–36,905; Kellwood Co., Sportswear Div., Rutherford, TN: September 10, 1998.
TA–W–36,940; Simpson Industries, Inc., Troy, OH: September 27, 1998.
TA–W–36,921; The William Carter Co., Barnesville, GA: September 24, 1998.
TA–W–36,955; Atlas Foundry & Machine Co., Tacoma, WA: October 8, 1998.
TA–W–36,996; High Plains, Inc., Dickinson, ND: October 2, 1998.
TA–W–36,897; Fargo Manufacturing, Inc., Poughkeepsie, KY: September 20, 1998.
TA–W–36,920: CMT Industries, Inc., El Paso, TX: May 6, 1999.
TA–W–36,929; Framatome Connectors Interlock, Inc., Boyne City, MI: September 22, 1998.
TA–W–36,924; FCI Electronics, Inc., Value-Added Div., Hazelton, PA: September 27, 1998.
TA–W–36,828; International Paper Co., Moss Point, MS: August 30, 1998.
TA–W–36,874; Fashions Apparel Corp., El Paso, TX: September 10, 1998.

TA–W–36,217A; Fairweather, Inc., Anchorage, AK: On or after April 6, 1998 and before June 10, 2001.
TA–W–36,962; CIBA Vision, Amwiler Facility, Amwiler, GA: All workers engaged in the production of Focus Night and Day Contact Lenses on or after September 18, 1998. All workers engaged in the production of Conventional Production Contact Lenses and High Volume Production Contact Lenses are denied.
TA–W–37,008; Elsie Undergarment Corp., Hialeah, FL: October 5, 1998.
TA–W–37,022; Mark Twain Apparel, Jamestown, TN: October 13, 1998.
TA–W–36,702; The Biltrite Corp., Ripley, MS: August 4, 1998.
TA–W–36,870; Fun Tees, Inc., Florence, SC: September 10, 1998.
TA–W–36,735; Makino, Inc., Mason, OH: August 2, 1998.
TA–W–36,992; Audioopak, Inc., Winchester, VA: October 15, 1998.
TA–W–36,894; Tara Textiles International, Inc., New York, NY: September 13, 1998.
TA–W–36,439 & A; General Electric Medical Systems, Electric Avenue Detectors, Milwaukee, WI and Ryerson Road Detectors, New Berlin, WI: June 8, 1998.
TA–W–36,840; Meisel Peskin Co., Inc., Brooklyn, NY: August 31, 1998.
TA–W–36,480; Casablanca Group, Secaucus, NJ: June 16, 1998.
TA–W–36,800; The J.W. Stannard Co., Largo, FL: August 17, 1998.
TA–W–36,764; McKenica, Inc., Buffalo, NY: August 16, 1998.
TA–W–36,584; Dino/DLA, New York, NY: July 9, 1998.
TA–W–36,798; Koul Apparel Industries, Inc., Notasulga, AL: August 23, 1998.
TA–W–36,913; Ratholes, Inc., Snyder, TX: September 30, 1998.
TA–W–36,863; QRC Corp., Quarker Rubber Co., Philadelphia, PA: September 15, 1998.
TA–W–36,933; North State Garment Co., Inc., Farmville, NC: September 28, 1998.
TA–W–37,012; Townwear Garment Co., Inc., Blairsville, GA: October 20, 1998.
TA–W–37,003; Oxford of Monroe, Monroe, GA: October 19, 1998.
TA–W–36,931; Highland Forest Products, Inc., Sweet Home, OR: September 9, 1998.
TA–W–36,826; Unitog Co. (CINTAS), Warrensburg, MO: August 13, 1998.
TA–W–36,859; Rio Grande Cutters, El Paso, TX: August 25, 1998.
TA–W–37,004; Chester County Sportswear, Henderson, TN: October 15, 1998.
TA–W–36,973; Heidelberg Publishing Services, Melville, NY: October 5, 1998.
TA–W–37,021; Endrill Corp., d/b/a Endrill Mul, Tuscola, TX: October 20, 1998.
TA–W–37,044; West Chester Holdings, Shuqualak, MS: October 25, 1998.
TA–W–36,974; Woods Equipment Co., Seguin, TX: October 11, 1998.
TA–W–37,066; Tenneco Automotive, Walker Manufacturing, Culver, IN: November 3, 1998.
TA–W–37,027; Fluid Process Systems, Inc., El Paso, TX: October 22, 1998.
TA–W–37,030; Stuffed Shirt, Inc., New York, NY: October 23, 1998.
TA–W–37,058; Tultex Corp., Bastain Plant, Bastain, VA: October 15, 1998.
TA–W–37,029; Weatherford US, Inc., Kenai, AK: October 27, 1998.
TA–W–37,062; Robett Manufacturing Co., Riceville, TN: October 21, 1998.
TA–W–36,889; Ball Foster Glass Container Co., Maywood Plant, Los Angeles, CA: September 17, 1998.
TA–W–36,900 & A: Chadbourn Curtain Co., A Div. of Pinebluff Manufacturing Corp., Chadbourn, NC: September 20, 1998.
TA–W–37,040; David Stevens, Inc., Blackwood, NJ: October 25, 1998.
TA–W–36,717; L.M. Rabinowitz and Co., Inc., Brooklyn, NY: August 11, 1998.
TA–W–36,952; Ann Loy Original, New York City, NY: October 1, 1998.
TA–W–36,852; Altec International, Inc., LaCrosse, WI: September 7, 1998.
TA–W–36,949; Computer Circuitry Co., Grand Prairie, TX: October 7, 1998.
TA–W–36,868; Abitibi Consolidated Sales Corp., West Tacoma Div., Steilacoom, WA: September 14, 1998.
TA–W–36,631; Rexam Release, Inc., Bedford Park, IL: July 17, 1998
TA–W–36,641; Chahta Enterprise, Dekalb, MS, Conehatta, MS and Pearl River, MS: July 19, 1998.
TA–W–36,119; Slatington Fashions, Slatington, PA: November 15, 1998.
TA–W–36,019; Thomas MWD, a/k/a Pathfinder Energy Service, Inc., New Iberia, LA: October 22, 1998.
TA–W–36,792; LaPine Forestry Service, Inc., La Pine, OR: August 23, 1998.
TA–W–36,107; Dana Corp., Parish Heavy Truck Structural Div., Reading, PA: November 15, 1998.
TA–W–36,681; Ganes Chemicals, Inc., Carlstadt, NJ: August 3, 1998
TA–W–36,024; Napier Co., Meriden, CT: October 22, 1998.
TA–W–36,783 & A; Boss Manufacturing Co., Greenville, AL and Monroeville, AL: August 19, 1998.
TA–W–36,117; Irwin Mfg Corp., Fitzgerald, GA: November 9, 1998.
TA–W–36,018; Lovingston Manufacturing Co., Inc., Plant #2, Harrisonburg, VA: October 20, 1998.
TA–W–37,089; KZ Corp., Vashon, WA: November 11, 1998.
TA–W–36,886; Carmet Co., Bad Axe, MI: September 15, 1998.
TA–W–37,041; Knitwaves LLC, New York, NY: August 13, 1998.
TA–W–36,957; Cogema Mining, Inc., Mills, WY: October 4, 1998.
TA–W–36,875; Collins and Aikman Dura Convertible Systems, Inc., Dura Div., Adrian, MI: September 8, 1998.
TA–W–36,724; Graphic Research, Inc., Chatsworth, CA: August 13, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA—TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from

Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03558; Atlanta Attachment Co., Lawrenceville, GA
NAFTA–TAA–03441; Carmet Co., Bad Axe, MI
NAFTA–TAA–03472; Seco/Warwick Corp., Meadville, PA
NAFTA–TAA–03486; Smithkline Beecham Pharmaceuticals, Piscataway, NJ
NAFTA–TAA–03592; Knitwaves, LLC, New York, NY
NAFTA–TAA–03386; Dyersburg Corp., Alamac Knit Fabrics, Elizabethtown, NC
NAFTA–TAA–03568; David Stevens, Inc., Blackwood, NJ
NAFTA–TAA–03398; Ingersoll Rand, Architectural Hardware Div., Greendale, WI
NAFTA–TAA–03216; UNIFI, Inc., Plant 10, UNIFI Textured Polyester Div., Mayodan, NC
NAFTA–TAA–03376; Darex Corp., Ashland, OR
NAFTA–TAA–03424; Oremet Wah Chang, Albany, OR
NAFTA–TAA–03375; Brubaker Tool Co., Millersburg, PA
NAFTA–TAA–03500; OMCO Mould, Inc., Winchester, IN
NAFTA–TAA–03544; Acordis Cellulosic Fibers, Inc., Rayon Plant, Axis, AL
NAFTA–TAA–03552; Dura Automotive Systems, Inc., Dura Hinge Operation, Manchester, MI
NAFTA–TAA–03521; Siebe Automotive, Robertshaw Div., Carthage, TN
NAFTA–TAA–03552; SMF, Inc., #2, Heavy Fabrication Div., Danville, IL
NAFTA–TAA–03546 & A; Case Corp., Racine Tractor/Foundry, Racine Transmission Plant, Racine, WI, and East Moline, East Moline, IL
NAFTA–TAA–03483; General Electric Service Center, Tucson, AZ
NAFTA–TAA–03382; Durkopp Adler America, Inc., Norcross, GA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03564; Duck Head Apparel, C., Monroe, GA
NAFTA–TAA–03550; American Medical Response, Natick, MS
NAFTA–TAA–03554; Marathon Ashland Pipe Line LLC, Bridgeport, IL
NAFTA–TAA–03589; Bombardier Transit Corp., Bensalem, PA
NAFTA–TAA–03577; Industrial Motor and Control, El Paso, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–3558; Atlanta Attachment Co., Lawrenceville, GA

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment. Sales or production, or both of such firm or subdivision have decreased absolutely.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03433; Collins and Aikman, Dura Convertible Systems, Inc., Dura Div., Adrian, MI: September 2, 1998.
NAFTA–TAA–03484; The William Carter Co., Barnesville, GA: September 24, 1998.
NAFTA–TAA–03492; Bass Foster Glass Container Co., Maywood Plant, Los Angeles, CA: September 17, 1998.
NAFTA–TAA–03405; La Pine Forestry Service, Inc., La Pine, OR: August 23, 1998.
NAFTA–TAA–03559; Pent Plastics, Inc., Afton, IA: September 13, 1998.
NAFTA–TAA–03361; H.L. Miller and Son, Inc., Iola, KS: August 9, 1998.
NAFTA–TAA–03516; Delphax Corp. A Xerox Co., Canton, MA Including Leased Workers of Accountemps, Braintree, MA, Judge Technical Service, Needham, MA, MMD Temps, Natick, MA, TAC Engineering, Newton, MA, New England Engineers & Design, Norwood, MA, Prosource, Waltham, MA, Strategy Tech Services, Westboro, MA, TAC Staffing Dedham, MA, Techaid, Waltham, MA, Technical Personnel Service, Andover, MA Winter, Wyman, Boston, MA: October 12, 1998.
NAFTA–TAA–03465; Chadbourn Curtain Co., A Div. of Pinebluff Manufacturing Corp., Chadbourn, NC: September 20, 1998.
NAFTA–TAA–03548; Tenneco Automotive, Walker Manufacturing, Culver, IN: November 3, 1998.
NAFTA–TAA–03532; Fluid Process Systems, Inc., El Paso, TX: October 22, 1998.
NAFTA–TAA–03523; Oxford of Monroe, Monroe, GA: October 19, 1998.
NAFTA–TAA–03520; Woods Equipment Co., Seguin, TX: October 11, 1998.
NAFTA–TAA–03563; Framatome Connectors Interlock, Inc., Boyne City, MI: September 18, 1998.
NAFTA–TAA–03377; General Electric Co., Industrial Systems, Tell City, IN: August 12, 1998.
NAFTA–TAA–03485; Mexport, Inc., El Paso, TX: September 10, 1998.
NAFTA–TAA–03514; United Filters, Inc., A Subsidiary of Perry Equipment Corp., Amarillo, TX: September 13, 1998.
NAFTA–TAA–03479; FCI Electronics, Inc., Value-Added Div., Hazelton, PA: September 27, 1998.
NAFTA–TAA–03538; U.S. Sack Corp., Grand Junction, CO: September 26, 1998.
NAFTA–TAA–03581; Dana Corp., Parish Heavy Truck Structural Div., Reading, PA: November 15, 1998.
NAFTA–TAA–03565; Irwin Mfg Corp., Fitzgerald, GA: November 9, 1998.
NAFTA–TAA–03543; Avery Dennison, World Wide Ticketing Service, Greensboro, NC: October 28, 1998.

I hereby certify that the aforementioned determinations were issued during the month of December, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 20, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33596 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,280A]

Eagle Ottawa Leather Company, Grand Haven, MI: Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Eagle Ottawa Leather Company, Grand Haven, Michigan. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,280A; Eagle Ottawa Leather Company, Grand Haven, Michigan (December 14, 1999)

Signed at Washington, D.C. this 17th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33597 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed evaluation of the year 2000 Summer Youth Employment and Training Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 28, 2000.

ADDRESSES: Greg Knorr, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5637, Washington, DC 20210; 202–219–5782 ext. 120 (this is not a toll-free number); gknorr@doleta.gov; Fax: 202–219–5455 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: .

I. Background

This evaluation will be a national study in summer 2000 of youth employment programs and services under the Workforce Investment Act (WIA). The last comprehensive national study of the summer program (the Title IIB program under the Job Training Partnership Act) was conducted in 1993. The Workforce Investment Act of 1998 is bringing about major changes in the way employment and training services are delivered to economically disadvantaged youth. It consolidates summer and year-round services, calls for a minimum funding level for serving out-of-school youth, mandates that certain types of services be made available to youth, includes a more comprehensive emphasis on performance accountability, and requires local Workforce Investment Boards to establish active Youth Councils. This evaluation will examine the newly integrated system of youth employment services and programs as they are operated during the summer 2000, the first year of WIA implementation. The project calls for a comprehensive report based on site visits to 28 local Workforce Investment Areas (WIAs) and a mail survey of all WIAs.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The proposed study will (1) describe the summer program as it is operating across the country, including activities of the Youth Councils, provision of the newly mandated services, and linkages with other agencies and organizations; (2) discuss how summer services are being integrated with year-round services; (3) examine the quality of the academic component in particular detail, describing academic programs that WIAs believe are especially effective for their youth; (4) describe how the WIAs devote attention/resources to reach and provide services to out-of-school youth; (5) assess the extent to which youth are engaged in work that needs to be done, complete the summer component and plan to return to school; (6) highlight innovative and adaptable practices; and (7) examine the data and information that WIAs are collecting or will be able to collect regarding individual progress, performance, and impacts of the program, including exploration of the feasibility of a national impact study of summer programs conducted under WIA.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of the Year 2000 Summer Youth Employment and Training Program.

Affected Public: Individuals and State, Local or Tribal Government.

Cite/reference	Total respond-ents	Frequency	Total responses	Average time per responses	Burden
Survey of all WIAs	642	One-time	642	2 hours	1,284 hours.
Site Visits to 28 WIAs	28	One-time	28	6 hours	168 hours.
Totals			670		1,452

Total Burden Cost (capital/startup): $30,000.

Total Burden Cost (operating/maintaining): $0—one-time only.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 20, 1999.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 99–33534 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North America Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Director of OTAA not later than January 7, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than January 7, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Phillips Joanna (Wkrs)	Ladd, IL	11/30/1999	NAFTA–3,598	Plastic film.
Hagale Industries (Co.)	Marshfield, MO	12/01/1999	NAFTA–3,599	Casual slacks.
Garden State Tanning (UNITE)	Adrian, MI	11/08/1999	NAFTA–3,600	Cutting facility.
Ashmore Sportswear (Co.)	Collinsville, VA	11/18/1999	NAFTA–3,601	T-shirts.
HCC (Co.)	Earlville, IL	11/30/1999	NAFTA–3,602	Assembling headers.
Lipton—Instant Tea Can Line (Co.)	Suffolk, VA	11/30/1999	NAFTA–3,603	Instant tea.
Elinco (Wkrs)	Stamford, CT	11/30/1999	NAFTA–3,604	Motors.
Kellogg Company (BCTW)	Battle Creek, MI	11/29/1999	NAFTA–3,605	Cereal products.
Nucor Corporation (Co.)	Conway, AR	12/02/1999	NAFTA–3,606	Hex head cap screws, locking nuts.
Chinet (The) Company (PACE)	Waterville, ME	12/01/1999	NAFTA–3,607	Laminated molded fiber trays.
White Swan Meta—Encompass (UNITE)	Dawson Springs, KY	12/02/1999	NAFTA–3,608	Healthcare apparel.
Moltrup Steel Products (Wkrs)	Beaver Falls, PA	12/02/1999	NAFTA–3,609	Steel products.
GL&V Dorr Oliver (Wkrs)	Hazelton, PA	12/02/1999	NAFTA–3,610	Industrial & municipal process equipment.
Headwear USA (Wkrs)	Pattonsburg, MO	11/23/1999	NAFTA–3,611	Caps.
Killark Electrical Products (Wkrs)	St. Louis, MO	12/06/1999	NAFTA–3,612	Electrical products.
Wolverine Tubs (Co.)	Roxboro, NC	12/03/1999	NAFTA–3,613	Copper tube.
Sims Manufacturing (Co.)	Payne, OH	12/06/1999	NAFTA–3,614	Cabs for tractors & equipment.
Tandycrafts (Co.)	Vay Nuys, CA	08/30/1999	NAFTA–3,615	Frame art, posters and mirrors.
Tuckaseiger Mills (Co.)	Bryson City, NC	12/07/1999	NAFTA–3,616	Comforters, bedpreads, mattress pads.
Chart Industries—Altec (IAMAW)	LaCrosse, WI	12/07/1999	NAFTA–3,617	Cryegenic heat exchanger.
B.F. Goodrick—Fairbanks Morse Engine (USWA).	Beloit, WI	12/09/1999	NAFTA–3,618	Diesel engines.
Sulzer Pumps (Co.)	Portland, OR	12/09/1999	NAFTA–3,619	Pumps.
VF Worker—Red Kap Industries (Co.)	Erwin, TN	12/07/1999	NAFTA–3,620	Pants and jackets.
Tempset (Co.)	St Louis, MO	12/13/1999	NAFTA–3,621	Thermal assemblies.
American Meter Co	Erie, PA	12/13/1999	NAFTA–3,622	Axial and Radio Flow Values.

[FR Doc. 99–33598 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

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

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises our (MSHA Approval and Certification Center (A&CC)) user fees. Fees compensate us for the costs that we incur for testing, evaluating, and approving certain products for use in underground mines. We based the year 2000 fees on our actual expenses for fiscal year 1999. The fees reflect changes both in our approval processing operations and in our costs to process approval actions.

DATES: These fee schedules are effective from January 1, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center, 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987 (52 FR 17506), pursuant to 30 U.S.C. 957, we published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products. The rule established specific procedures for calculating, administering, and revising user fees. We have revised our fee schedule for the year 2000 in accordance with the procedures of that rule and include this new fee schedule below. For approval applications postmarked before January 1, 2000, we will continue to calculate fees under the previous (1999) fee schedule, published on December 18, 1998.

Fee Computation

In general, we computed the year 2000 fees based on fiscal year 1999 data. We calculated a weighted-average, direct cost for all the services that we provided during fiscal year 1999 in the processing of requests for testing, evaluation, and approval of certain products for use in underground mines. From this cost, we calculated a single hourly rate to apply uniformly across all of the product approval categories during the year 2000.

Elimination of Flat Rates

Under the provisions of 30 CFR Part 5, three approval areas have been converted from a flat rate to an hourly rate: Statement of Test and Evaluation, Statement of Test and Evaluation Extension, and Mine Wide Monitoring System Barrier Classification. The conversion of these last three approval areas results in a single hourly rate being uniformly applied regardless of product type. See the schedule for the appropriate hourly rate.

Dated: December 22, 1999.

Rebecca J. Smith,

Deputy Director, Office of Standards, Regulations and Variances.

FEE SCHEDULE EFFECTIVE JANUARY 1, 2000

[Based on FY 1999 data]

Action title	Hourly rate
Fees for Testing, Evaluation, and Approval of all Mining Products [1]	$61
Retesting for Approval as a Result of Post-Approval Product Audit [2]	.....
30 CFR Part 15—Explosives Testing	
Permissibility Tests for Explosives:	
Weigh-in	$462
Physical Exam: First size	325
Chemical Analysis	1,977
Air Gap—Minimum Product Firing Temperature	460
Air Gap—Room Temperature	352
Pendulum Friction Test	163
Detonation Rate	352
Gallery Test 7	7,436
Gallery Test 8	5,533
Toxic Gases (Large Chamber)	805
Permissibility Tests for Sheathed Explosives:	
Physical Examination	128
Chemical Analysis	1,044
Gallery Test 9	1,944
Gallery Test 10	1,944
Gallery Test 11	1,944

FEE SCHEDULE EFFECTIVE JANUARY 1, 2000—Continued

[Based on FY 1999 data]

Action title	Hourly rate
Gallery Test 12	1,944
Drop Test	648
Temperature Effects/Detonation	672
Toxic Gases	580

[1] Full approval fee consists of evaluation cost plus applicable test costs.

[2] Fee based upon the approval schedule in effect at the time of retest.

Note: When the nature of the product requires that we test and evaluate it at a location other than our premises, you must reimburse us for the traveling, subsistence, and incidental expenses of our representative in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 99–33575 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Notice of Special Enrollment Rights, Health Insurance Portability for Group Health Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Notice of Special Enrollment Rights. A copy of the proposed information collection request (ICR) can be obtained by contacting the addressee below.

DATES: Written comments must be submitted on or before January 27, 2000.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Subtitle B of title 1 or ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, August 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997, (62 FR 16920 through 16923) (April 8 Interim Rules).

In order to improve participants' understanding of their rights under an employer's group health plan, HIPAA requires that a participant be provided with a description of a plan's special enrollment rules on or before the time when a participant is offered the opportunity to enroll in a group health plan.

Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Current Actions: The Department has not modified the ICR incorporated in the April 8 Interim Rules, but intends to submit the ICR to OMB for continued clearance. Comments received in response to this notice will be incorporated in the submission to OMB. The existing ICR should be continued because it implements the disclosure requirements mandated by the portability provisions enacted in section 701 of HIPAA. Specifically, this ICR implements the statutorily prescribed requirements necessary to provide notice of enrollment rights. The special enrollment rules generally apply to circumstances when the participant initially declined to enroll in the plan, and subsequently would like to have coverage.

The April 8 Interim Rules offer a model form to be used by group health plans and health insurance issuers, containing the minimum information mandated by the statute.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Notice of Enrollment Rights.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0101.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 15,290.

Responses: 1,612,690.

Estimated Total Burden Hours: 6,720.

Total Burden Cost (Operating and Maintenance): $860,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 22, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 99–33599 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Notice of Pre-Existing Condition Exclusion, Health Insurance Portability for Group Health Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed, Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Notice of Pre-Existing Condition Exclusion. A copy of the proposed information collection request (ICR) can be obtained by contacting the addressee identified below.

DATES: Written comments must be submitted on or before February 28, 2000.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Subtitle B of title 1 of ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, Aug. 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997 (62 FR

16920 through 16923) (April 8 Interim Rules).

In order to meet HIPAA's goal of improving portability of health care coverage, participants need to understand their right to demonstrate prior creditable coverage when entering a group health plan that imposes pre-existing condition exclusion provisions. In addition, participants entering plans that use an alternative method of determining creditable coverage also need to be informed of the plan's provisions. Therefore, the Department has determined that plans that contain these provisions must disclose that fact to new participants, as well as inform individual participants of the extent to which a pre-existing condition exclusion applies to them.

Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Current Actions: The Department has not modified the ICR incorporated in the April 8 Interim Rules, but intends to submit the ICR to OMB for continued clearance. Comments received in response to this notice will be incorporated in the submission of OMB. The existing collection of information should be continued because it implements disclosure requirements mandated by the portability provisions enacted in section 701 of HIPAA. Under the April 8 Interim Final Rules, a group health plan or health insurance issuer may not impose any pre-existing condition exclusions on a participant unless the participant has been notified in writing that the plant contains preexisting condition exclusions, that a participant has a right to demonstrate any period of prior creditable coverage, and that the plan or issuer will assist the participant in obtaining a certificate of prior coverage from any prior plan or issuer, if necessary. Plans that use the alternative method of crediting coverage must disclose their method at the time of enrollment in the plan.

In addition, the April 8 Interim Rules require that before a plan or issuer imposes a preexisting condition exclusion on a particular participant, it must first disclose that determination in writing, including the basis of the decision, and an explanation of any appeal procedure established by the plan or issuer.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Notice of Pre-Existing Exclusion.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0102.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 6,900.

Responses: 1,612,750.

Total Estimated Burden Hours: 6,875.

Total Burden Cost (Operating and Maintenance): $710,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 22, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 99–33600 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Establishing Prior Creditable Coverage, Health Insurance Portability for Group Health Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Establishing Prior Creditable Coverage. A copy of the proposed information collection request (ICR) can be obtained by contacting the addressee below.

DATES: Written comments must be submitted on or before February 28, 2000.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Subtitle B of title 1 of ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, August 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997, (62 FR 16920 through 16923) (April 8 Interim Rules).

In order to meet HIPAA's goal of improving access to and portability of health care benefits, the statute provides that, after the submission of evidence establishing prior creditable coverage, a subsequent health insurance provider would be limited to the extent to which it could use pre-existing condition exclusions to limit coverage. This ICR covers the submission of materials sufficient to establish prior creditable coverage.

Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Current Actions: The Department has not modified the ICR incorporated in the April 8 Interim Rules, but intends to submit the ICR to OMB for continued clearance. Comments received in response to this notice will be incorporated in the submission to OMB. The existing collection of information should be continued because it implements disclosure provisions mandated by the portability provisions enacted in section 701 of HIPAA. Specifically, this ICR implements statutory requirements for establishing prior creditable coverage. Under the April 8 Interim Rules, a group health plan is obligated to provide a written certificate of information suitable for establishing prior creditable coverage of a participant or beneficiary. To the extent that a certification is not available or is inadequate to prove prior creditable coverage, alternative methods of establishing creditable coverage are provided.

The April 8 Interim Rules offer model certification and notice forms to be used by group health plans and health insurance issuers, containing the minimum information mandated by the statute.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Establishing Prior Creditable Coverage.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0103.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 15,604.

Responses: 8,000,000.

Total Estimated Burden Hours: 336,060.

Total Burden Cost (Operating and Maintenance): $31,800,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 22, 1999.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 99–33601 Filed 12–27–99; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–163]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

DATES: Tuesday, January 25, 2000, 8:30 a.m. to 5. p.m.; Wednesday, January 26, 2000, 8:30 a.m. to 5 p.m.; and Thursday, January 27, 2000, 8:30 a.m. to 12 Noon.

ADDRESS: National Aeronautics and Space Administration, 300 E Street, SW, Conference Room 7H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: George L. Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

Overview of Strategic Plan and Present Status

Roadmap Process & Lessons Learned Roadmap Team

Office of Space Science Status Report

Living with a Star Initiative and Status

Global Electrodynamics Connector

Education/Public Outreach Processes and Status Review in Sun-Earth Connection

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: December 16, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–33557 Filed 12–27–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL INSTITUTE FOR LITERACY

Meeting Notice

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: January 12, 2000 from 10 a.m. to 4:30 p.m.

ADDRESS: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW, Washington, DC 20006. Telephone (202) 233–2027.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Pub. L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advice and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute.

Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The National Institute for Literacy Advisory Board will be meeting on January 12, 2000. The Board will

discuss: (1) Plans for the National Literacy Summit to be held in February; and (2) NIFL's Equipped for the Future standards guide. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 from 8:30 am to 5 p.m.

Dated: December 22, 1999.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 99–33577 Filed 12–27–99; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

In the Matter of Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize the licensee to possess the Zion Nuclear Power Station (ZNPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of two pressurized-water reactors located at the ComEd site on the west shore of Lake Michigan about 40 miles north of Chicago, Illinois, in the extreme eastern portion of the city of Zion, Illinois (Lake County). The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II

Section 50.54(w) of 10 CFR Part 50 requires power reactor licensees to maintain onsite property damage insurance coverage in the amount of $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. Section 140.11(a)(4) of 10 CFR Part 140 requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain liability insurance of $200 million and to participate in a secondary insurance pool.

NRC may grant exemptions from the requirements of 10 CFR Part 50 of the regulations, which pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, and (2) present special circumstances. Special circumstances exist when (1) application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)), or (2) compliance would result in undue hardship or costs that are significantly in excess of those incurred by others similarly situated. The underlying purpose of Section 50.54(w) is to provide sufficient property damage insurance coverage to ensure funding for onsite post-accident recovery stabilization and decontamination costs in the unlikely event of an accident at a nuclear power plant.

Also, the NRC may grant exemptions from the requirements of 10 CFR Part 140 of the regulations, which pursuant to 10 CFR 140.8, are authorized by law and are otherwise in the public interest. The underlying purpose of Section 140.11 is to provide sufficient liability insurance to ensure funding for claims resulting from a nuclear incident or a precautionary evacuation.

III

On October 22, 1999, ComEd requested an exemption from the financial protection requirement limits of 10 CFR 50.54(w) and 10 CFR 140.11(a)(4). ComEd requested that the amount of insurance coverage it must maintain be reduced to $50 million for onsite property damage and $100 million for offsite financial protection and to withdraw from participation in the secondary liability insurance pool. The licensee stated that special circumstances exist because of the permanently shutdown and defueled condition of ZNPS.

The financial protection limits of 10 CFR 50.54(w) and 10 CFR 140.11 were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. In a permanently shutdown and defueled reactor facility, the reactor will never again be operated, thus eliminating the possibility of accidents involving the reactor. The Defueled Safety Analysis Report (DSAR) analyzed the remaining design basis accidents that are relevant at ZNPS in its defueled condition. These are: a loss of spent fuel inventory and cooling; a fuel handling accident in the fuel building; and a radioactive waste handling accident. The staff evaluated these accidents in the safety evaluation supporting the ZNPS exemption from offsite emergency planning requirements dated August 31, 1999. In its analysis, the staff determined that the radiological consequences of the design basis accidents cannot exceed the Environmental Protection Agency (EPA) early-phase Protective Action Guidelines (PAGs) of 1.0 rem.

The ZNPS was shut down in February 1997. The decay heat from the spent fuel stored in the spent fuel pool decreases over time. In this regard, the staff has determined that as of June 1999, air cooling of the fuel would be sufficient to maintain the integrity of the fuel cladding, and a complete loss of water from the ZNPS spent fuel pool (SFP) would not result in an offsite release of fission products exceeding the EPA early-phase PAGs.

In SECY 96–256, ''Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11,'' dated December 17, 1996, the staff estimated the onsite cleanup costs of accidents considered to be the most costly at a permanently defueled site with spent fuel stored in the SFP. The staff found that the onsite recovery costs for a fuel-handling accident could range up to $24 million. The estimated onsite cleanup costs to recover from the rupture of a large liquid radwaste storage tank could range up to $50 million. The proposed insurance coverage levels in SECY 96–256 were calculated on a per-reactor basis and each reactor at a multi-unit site would be treated as having its own SFP. Although ZNPS is a two-reactor site, there is only one SFP. Therefore, the licensee's proposed level of $50 million for onsite property insurance is sufficient to cover these estimated cleanup costs.

The offsite cleanup costs of the accident scenarios previously discussed are estimated to be negligible in SECY 96–256. However, a licensee's liability for offsite costs may be significant as a result of lawsuits alleging damages from offsite releases. Experience at Three Mile Island Unit 2 showed that significant judgments against a licensee are possible despite negligible dose consequences from an offsite release. An appropriate level of financial liability coverage is needed to account for potential judgments and settlements and to protect the Federal Government from indemnity claims. The licensee's proposed level of $100 million in primary offsite liability coverage is sufficient for this purpose.

The staff has determined that participation in the secondary insurance pool for offsite financial protection is

not required for a permanently shutdown and defueled plant after the time that air cooling of the spent fuel is sufficient to maintain the integrity of the fuel cladding. As previously noted, the staff finds that sufficient time has elapsed to ensure the integrity of the ZNPS spent fuel cladding.

IV

The NRC staff has completed its review of the licensee's request to reduce financial protection limits to $50 million for onsite property insurance and $100 million for offsite liability insurance. On the basis of its review, the NRC staff finds that the spent fuel stored in the Zion Nuclear Power Station's SPF is no longer susceptible to rapid zirconium oxidation. The requested reductions are consistent with SECY 96–256. The licensee's proposed financial protection limits will provide sufficient insurance to recover from limiting hypothetical events, if they occur. Thus, the underlying purposes of the regulations will not be adversely affected by the reductions in insurance coverage.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption to reduce onsite property insurance to $50 million is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Further, special circumstances are present, as set forth in 10 CFR 50.12(a)(2)(ii). Therefore the Commission hereby grants an exemption from the requirements of 10 CFR 50.54(w).

In addition, the Commission has determined that, pursuant to 10 CFR 140.8, an exemption to reduce primary offsite liability insurance to $100 million, accompanied by withdrawal from the secondary insurance pool for offsite liability insurance, is authorized by law and is in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 140.11(a)(4).

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (64 FR 69806).

These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33683 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board Panel

[Docket No. 40–8027–MLA–4; ASLBP No. 99–770–09–MLA]

Sequoyah Fuels Corporation, Gore, OK Site; Decommissioning; Notice of Hearing

December 22, 1999.

This proceeding involves a proposed amendment by Sequoyah Fuels Corporation to its Source Material License No. SUB–1010, to authorize restricted decommissioning of its site near Gore, Oklahoma. The proposal under review, currently denominated as the Second Revised Site Decommissioning Plan (SRSDP), was submitted to the Nuclear Regulatory Commission on March 26, 1999 and seeks authority to decommission the facility based on restricted release pursuant to 10 CFR 20.1403.

Notice is hereby given that, by Memorandum and Order dated December 16, 1999, LBP–99–46, the Presiding Officer has granted the request for a hearing submitted by the Attorney General of the State of Oklahoma. Parties to this proceeding are the Licensee, Sequoyah Fuels Corporation; the State of Oklahoma; and the Staff of the Nuclear Regulatory Commission.

This proceeding will be conducted under the Commission's informal hearing procedures set forth in 10 CFR, Part 2, Subpart L. In response to a Notice of Opportunity for Hearing, published at 64 Fed. Reg. 31023 (June 9, 1999), the State of Oklahoma submitted a request for a hearing. On July 27, 1999, Administrative Judge Charles Bechhoefer was designated Presiding Officer, to rule on petitions for leave to intervene and/or requests for a hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory proceeding. Pursuant to 10 CFR 2.722 and 2.1209, Administrative Judge Thomas D. Murphy was appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review. 64 FR 42154 (August 3, 1999).

During the course of this proceeding, the Presiding Officer, pursuant to 10 CFR 2.1211(a), will entertain limited appearance statements from any member of the public who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not evidence and do not become part of the decisional record, they may assist the Presiding Officer and parties in their consideration of matters at issue in this proceeding. Limited appearance statements should be made in writing. If the Presiding Officer conducts an oral argument or in-person prehearing conference, the Presiding Officer may at his discretion hear oral statements, at a time and location yet to be determined. 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 Presiding Officer, 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, D.C. 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, December 22, 1999.

Charles Bechhoefer,

Presiding Officer, Administrative Judge.

[FR Doc. 99–33678 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Dresden Station, Unit Nos. 2 and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the NRC) is considering issuance of an exemption from certain requirements of its regulations regarding Facility Operating Licenses Nos. DPR–19 and DPR–25 issued to the

Commonwealth Edison Company (ComEd, the licensee), for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from certain emergency lighting requirements of 10 CFR part 50, Appendix R, Section III.J, applicable to Dresden, Units 2 and 3. The exemption will allow the use of hand-held portable lights to provide lighting for outdoor access and egress routes between the main power block, the isolation condenser pumphouse, the cribhouse, the clean demineralized water storage tank, and for reading the clean demineralized water storage tank level instrument.

The proposed action is in accordance with the licensee's application dated November 19, 1998.

The Need for the Proposed Action

Equipment needed for safe shutdown at Dresden, Units 2 and 3, is maintained inside the main power block and several buildings onsite. However, access and egress between these buildings, the clean demineralized water storage tank (CDST), and the main power block requires walking outdoors. These outdoor areas are normally lit by outdoor lighting powered by offsite power or emergency power from the security diesel. This installed outdoor and security lighting does not meet the Appendix R requirements for an 8-hour battery power supply.

Implementation of outdoor battery powered lighting units to meet Appendix R requirements would result in expenditure of engineering, construction, and plant resources for their installation, maintenance, and operation. The requested exemption from the requirements of Appendix R, Section III.J, would allow the use of hand-held portable lights, in the event that sufficient daylight or security lighting is not available, when transiting access and egress routes between the main power block, the isolation condenser pumphouse, the cribhouse, and the CDST, including reading the CDST level instrument. The exemption is needed to avoid the unnecessary expenditure of resources.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with the availability of hand-held battery-powered portable lights for use during transit between these site structures and for reading the CDST level instrument, the installation of emergency lighting units with at least an 8-hour battery supply for these transit routes and the CDST level instrument is not necessary to achieve the underlying purpose of Section III.J of Appendix R to 10 CFR part 50.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with this action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for Dresden, Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on December 8, 1999, the staff consulted with the Illinois official, Mr. Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated November 19, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33679 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop To Develop a Standard Review Plan for Decommissioning

SUMMARY: This notice announces a public workshop the U.S. Nuclear Regulatory Commission (NRC) is sponsoring to solicit input from stakeholders during the development of a Standard Review Plan (SRP) and other guidance for decommissioning nuclear facilities.

SUPPLEMENTARY INFORMATION: On October 21, 1998, NRC announced that it was sponsoring a series of public workshops to support the staff's development of an SRP and other guidance for the decommissioning of nuclear facilities. On November 18, 1998, NRC published the schedule for these workshops and indicated that a workshop would be held on October 20–21, 1999, at NRC Headquarters, at Two White Flint North, 11545 Rockville Pike, Rockville, MD. On September 8, 1999, NRC staff announced that it was postponing the October workshop until February 2000. The new date for the workshop is February 18 and 19, 2000. The workshop will be held at the NRC Headquarters in the Two Flint North Auditorium, at 11545 Rockville Pike, Rockville, MD. The workshop will begin at 8:30 a.m. and end at 4:30 p.m. on both days.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749.

Dated at Rockville, Maryland, this 20th day of December 1999.

For the U.S. Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–33681 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 116th meeting on January 13 and 14, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Thursday, January 13, 2000—5 p.m. until the conclusion of business

Friday, January 14, 2000—12 Noon until the conclusion of business

The Committee will prepare ACNW letter reports and discuss ACNW Planning and Procedures as time allows.

Preparation of ACNW Reports (Open)—The Committee will discuss planned reports on the following topics: The Department of Energy's Draft Environmental Impact Statement for the Proposed Repository at Yucca Mountain, NV; the rubblization decommissioning option; the NRC's proposed high-level waste regulation; and other topics discussed during this and previous meetings as the need arises.

ACNW Planning and Procedures (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. This will include strategic planning and self-assessment. The Committee may also discuss ACNW-related activities of individual members.

Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8 A.M. and 5 P.M. EST. ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: December 21, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–33676 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Plant Operations

The ACRS Subcommittee on Plant Operations will hold a meeting on January 20, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 20, 2000—8:30 a.m. until the conclusion of business

The Subcommittee will discuss selected technical components of the revised reactor oversight process, including the updated significance determination process and plant performance indicators. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two

working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 21, 1999.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–33677 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NUREG–0713, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities;'' Issuance, Availability

The Nuclear Regulatory Commission has issued Volume 20 of NUREG–0713, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities.'' This NUREG summarizes the occupational exposure data that are maintained in the U.S. Nuclear Regulatory Commission's (NRC) Radiation Exposure Information and Reporting System (REIRS). The bulk of the information contained in this NUREG was compiled from the 1998 annual reports submitted by NRC licensees [1] subject to the reporting requirements of 10 CFR 20.2206. Since there are no geologic repositories for high level waste currently licensed, only six categories will be considered in this report. This NUREG is available at <*http://www.reirs.com*>, through the NRC Public Electronic Reading Room link <*http://www.nrc.gov/NRC/ADAMS/index.htm*> at the NRC Homepage.

Comments and suggestions in connection with this NUREG are encouraged at any time. Written comments may be submitted to the REIRS Project Manager, Mailstop T–9F31, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued NUREGs may be purchased from both the Government Printing Office(GPO) and the National Technical Information Service (NTIS). Details on this service may be obtained by writing either the GPO at The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 or the NTIS, 5285 Port Royal Road, Springfield, VA 22161. NUREGs are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission.

Thomas L. King,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 99–33682 Filed 12–27–99; 8:45 am]

BILLING CODE 7590–01–P

[1] Commercial nuclear power reactors; industrial radiographers; fuel processors (including uranium enrichment), fabricators, and reprocessors; manufacturers and distributors of byproduct material; independent spent fuel storage installations; facilities for land disposal of low-level waste; and geologic repositories for high-level waste.

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review: Comment Request for Reinstatement, With Change, of a Previously Approved Information Collection for Which Approval Has Expired: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of the following reinstatement, with change, of a previously approved collection which has expired. SF 2817, Life Insurance Election, is used by Federal employees and assignees (those who have acquired ownership and control of an employee's or annuitant's coverage through the enrollee's assignment of life insurance). The form is used as the official agency record of the individual's coverage and enrollment status under the FEGLI program, and as acknowledgment and authorization by the individual for collection from him or her of the enrollee share of the premium contributions.

We estimate 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before January 27, 2000.

ADDRESSES: Send or deliver comments to—

Laura Lawrence, Senior Insurance Benefits Specialist, Insurance Planning and Evaluation Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis Pinkney, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–33584 Filed 12–27–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: RI 38–107

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of an information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received Januay 27, 2000.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office

Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–33586 Filed 12–27–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Deletion of a System of Records Notice

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to delete a Privacy Act system of records.

SUMMARY: The Office of Personnel Management is deleting the following system from its inventory of Privacy Act systems of records notices.

DATES: The changes will be effective without further notice February 7, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Office of Personnel Management conducted a review of its Privacy Act systems of records and determined the following records are no longer being maintained by the agency.

System No.	System name
OPM/INTERNAL–1 ...	Defense Mobilization Emergency Cadre Records.

Office of Personnel Management,

Janice R. Lachance,

Director.

[FR Doc. 99–33585 Filed 12–27–99; 8:45 am]

BILLING CODE 6325–01–U

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Evidence of Marital Relationship-Living with Requirements.

(2) *Form(s) submitted:* G–124, G–124a, G–237, G–238, G–238a.

(3) *OMB Number:* 3220–0021.

(4) *Expiration date of current OMB clearance:* 3/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals, State, Local, or Tribal government.

(7) *Estimated annual number of respondents:* 1,100.

(8) *Total annual responses:* 1,100.

(9) *Total annual reporting hours:* 196.

(10) *Collection description:* Under the R RA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law-marriage, termination of previous marriages and residency requirements.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Lori Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–33545 Filed 12–27–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24213; 812–11580]

Evergreen Select Fixed Income Trust, *et al.*; Notice of Application

December 21, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the ''Act'') for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Evergreen Select Fixed Income Trust, Evergreen Select Equity Trust, Evergreen Select Money Market Trust, Evergreen Municipal Trust, Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen International Trust, Evergreen Money Market Trust, Evergreen Variable Annuity Trust (collectively the ''Trusts''), on behalf of their respective series, and First Union National Bank (''FUNB'') and any investment adviser controlling, controlled by or under common control with FUNB (together with FUNB, the ''Advisers'').

Filing Dates: The application was filed on April 14, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 21, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C.

20549–0609. Applicants, c/o Maureen E. Towle, Esq., Evergreen Investment Management Company, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trusts, organized as Delaware business trusts, are registered under the Act as open-end management investment companies. The Trusts currently consist of 92 series (each a ''Fund'' and collectively ''Funds''), some of which hold themselves out as money market Funds and are subject to the requirements of rule 2a–7 under the Act (''Central Funds'').[1] The Advisers are wholly-owned subsidiaries of First Union Corporation, a publicly-held holding company. FUNB, which is exempt from registration under the Investment Advisers Act of 1940 (''Advisers Act'') and the Advisers, each of which is registered under the Advisers Act, currently serve as investment advisers to the Funds.[2]

2. Applicants state that each Fund has, or may be expected to have, uninvested cash (''Uninvested Cash'') held by a custodian. Such Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. Certain Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

3. Applicants request an order to permit each of the Funds (''Participating Funds'') to invest their cash Balances in one or more of the Central Funds, and the Central Funds to sell their shares to, and redeem their shares from, the Participating Funds. Investment of Cash Balances in shares of the Central Funds will be made only to the extent that such investments are consistent with each Participating Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(D)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of section 12(d)(1) (A) and (B) to permit the Participating Funds to invest Cash Balances in Central Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1) (A) and (B) were intended to prevent. Applicants state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund will not be in a position to gain undue influence over a Central fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Central Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealer's (''NASD'') Conduct Rules). In connection with approving any advisory contract for a Participating Fund, each Participating Fund's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees'') will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Participating Fund by the Adviser as a result of the investment of Uninvested Cash in the Central Funds. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act, in pertinent part, defines an ''affiliated person'' of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with the other person and any person owning, controlling or holding with power to vote, 5% or more of the other person. Applicants state that because the Funds share a common Board, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. In addition, applicants state that because a Participating Fund may acquire 5% or more of a Central Fund, each Fund may be deemed to be an affiliated person of the other Fund. As a result, section 17(a) would prohibit the sale of the shares of a Central Fund to the Participating Funds, and the redemption of the shares by a Central Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each

[1] Applicants also request relief for all registered open-end management investment companies or series thereof that are or become advised by the Advisers (''Future Funds'' and together with Funds, the ''Funds''). All investment companies that currently intend to rely on the requested relief are named as applicants. Any other Funds that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

[2] In addition to FUNB, the Advisers are Evergreen Investment Management Company, Evergreen Asset Management Corp., First International Advisers, Ltd. and Meridian Investment Company.

investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the 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.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Participating Funds satisfies the standards in section 6(c) and 17(b). Applicants note that shares of the Central Funds will be purchased and redeemed by the Participating Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Central Fund has the right to discontinue selling shares to any of the Participating Funds if the Central Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Fund, by participating in the proposed transactions, and each Adviser, by managing the assets of the Participating Funds investing in a Central Fund, and a Central Fund by selling shares to the Participating Fund could be deemed to be a participant in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 Permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Participating Funds in shares of the Central funds would be indistinguishable from any other shareholder account maintained by the Central Fund and that the transaction will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Central Funds sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the rules of Conduct of the NASD).

2. Before the next meeting of the Board of a Participating Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser to the Participating Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any advisory contract for a Participating Fund, the Board of the Participating Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Fund by the Adviser as a result of Uninvested Cash being invested in the Central Fund. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the participating Fund's aggregate investment in the Central Funds does not exceed 25 percent of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund and series thereof will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Participating Fund, Central Fund, and any future Fund that may rely on the requested order shall be advised by the Advisers.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33634 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42256; File No. SR–CBOE–99–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Clarify Certain Aspects of Interpretation and Policy .02 to Exchange Rule 6.8

December 20, 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 August 19, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

CBOE proposes to amend its Interpretation and Policy .02 to CBOE Rule 6.8 in order to clarify certain aspects of the Interpretation. Below is the text of the proposed rule change. Proposed new language is italicized.

RAES Operations in Equity Options

Rule 6.8 [No change]

* * * Interpretation and Policy

.01 [No change].

.02 Orders to buy or sell options that are multiply traded in one or more markets in addition to the Exchange will not be automatically executed on RAES at prices inferior to the current best bid or offer in any other market, as such best bids or offers are identified in RAES. In respect of those classes of options that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been specifically designated by the appropriate Floor Procedure Committee as coming within the scope of this sentence (''automatic step-up classes''), under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by no more than the ''step-up amount'' as defined below, such orders will be automatically executed on RAES at the current best bid or offer in the other market. In respect of automatic step-up classes of options under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up amount, or in respect of specified automatic step-up classes or series of options or specified markets under circumstances where the Chairman of the appropriate Floor Procedure Committee or his designee has determined that automatic step-up should not apply because quotes in such options or markets are deemed not to be reliable, or in respect of classes of options other than automatic step-up classes where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders will be rerouted by the DPM or OBO for that class of options for non-automated handling. The DPM or OBO will report the execution or non-execution of such orders to the firm that to originally forwarded the order to RAES. As used in this Interpretation and Policy .02, the term ''step-up amount'' shall mean the minimum increment for options of that series established pursuant to Rule 6.42, or any greater amount established by the appropriate Floor Procedure Committee in respect of specified automatic step-up classes or series of options. The procedures described in this Interpretation .02 shall not apply in circumstances where a ''fast market'' in the options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that firm quote requirements do not apply. *Under circumstances where the Chairman of the appropriate Floor Procedure Committee or his designee determines that quotes from one or more particular markets in one or more classes of options are not reliable, the Chairman or designee may direct the senior person in charge of the Exchange's Control Room to exclude the unreliable quotes from the RAES determination of the NBBO in the particular option class(es) through the end of that trading day, or until the quotes are determined to be reliable again whichever occurs first.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comment it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Interpretation and Policy .02 to CBOE Rule 6.8 provides that orders to buy or sell equity options that are multiply traded in one or more markets in addition to the CBOE will not be executed on the CBOE's Retail Automatic Execution System (''RAES'') at prices inferior to the current best bid or offer in any other market (known as the National Best Bid or Offer, or ''NBBO''), as the NBBO is identified in RAES.

The proposed rule change makes three clarifications to this Interpretation: (1) It clarifies that one or more markets may be turned off from the NBBO calculation while still checking the prices on other markets; (2) it specifies the individuals vested with authority to make the determination to exclude a market; and (3) it clarifies the situation(s) under which such determinations may be made.

Occasionally, bids and offers in certain options from a particular market may not be reliable, whether due to unusual market conditions, systems problems, failure by another market's specialist to update quotes, or other causes. The language of the current Interpretation and Policy .02 is ambiguous about whether the Exchange has any way to avoid executing RAES trades at these inaccurate prices except to turn off NBBO execution altogether for affected option classes.[3] If the NBBO execution was thus turned off, public customers receiving executions through the RAES system would lose the potential benefits of an execution at the NBBO, even when the inaccurate quotes are only coming from one particular exchange.

The proposed change will clarify the Exchange's current Interpretation, which allows a market to be excluded individually. It will make clear that the Exchange can keep filling orders at the best prices available at any market not experiencing quote reliability problems by removing the unreliable quotes from the RAES determination of the NBBO. The unreliable quotes may be excluded from the NBBO determination until such times as either the quotes become reliable again, or trading ends for the day—whichever occurs first. This change will clarify that Exchange public customers may receive RAES execution of their orders at the best price available at multiple exchanges more frequently and with less uncertainty.

The proposed change also will vest responsibility and discretion for determining the reliability of quotes from a particular exchange on a particular option class with the Chairman of the appropriate Floor Procedures Committee or his designee—the same procedure that currently applies under Interpretation and Policy .02 for determining when the ''automatic step-up'' procedure should not apply.[4]

Finally, the proposed change seeks to better describe the circumstances when a market may be excluded from the NBBO. Currently, the rule states that the NBBO procedures in the Interpretation shall not apply when a ''fast market'' has been declared at the Exchange or another market, or when comparable conditions exist such that the firm quote requirements do not apply. When the Exchange or another market declares a ''fast market,'' an indication is sent out alerting the public to that fact. However, it will not always be known when another market has taken the step of suspending firm quote requirements in an option class. The Exchange, by contrast, will often know if there are problems with quotes in one or more option classes at another market because the trading crowds at the Exchange continuously monitor the other markets. Under the proposed Interpretation, if another market's quotes appear to be unreliable, the trading crowd or Exchange officials can bring this to the attention of the Chairman of the appropriate Floor Procedure Committee or his designee, who in turn can arrange

[3] While Interpretation .02 currently provides that the procedures for NBBO executions ''shall not apply'' if a ''fast market'' has been declared, or if the firm quote requirements do not apply at the other market, the Interpretation could be read to require that NBBO be turned off. The Exchange intended for the rule to have the latter interpretation, and has interpreted the rule as such.

[4] *See* Release No. 34–40096 (June 16, 1998), 63 FR 34209 (June 23, 1998).

to contact the other market directly to confirm whether there is a problem with the quotes.

2. Statutory Basis

CBOE believes that the proposed change in Interpretation and Policy .02 is consistent with and is furtherance of the provisions of Section 6(b)(5) [5] of the Act. By making clear that the Exchange has greater flexibility to keep RAES executing orders at the NBBO, CBOE believes that public customers will receive better executions of their orders more frequently. This will improve the efficiency of RAES, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system, and thus protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–45 and should be submitted by January 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33635 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42257; File No. SR–DTC–99–22]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Revisions to the Procedures for Running Call Lotteries for Book Entry Only Securities

December 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 23, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–99–22) as described in Items I, II, III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will revise its procedures for running call lotteries on book-entry only (''BEO'') securities for which DTC receives notice of the call after the redemption date. Specifically, DTC will run lotteries in these instances using participants' positions as of the close of business on the day prior to the call publication date instead of the date on which the call is announced by DTC.

II Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Currently, DTC's call lottery process allocates called BEO securities among participants having positions in the called securities as of the close of business on the day DTC announces the call lottery (''DTC call announcement date''). DTC adopted these procedures in March 1998 with the approval of the Securities Exchange Commission and the endorsement of the Corporate Actions Division of the Securities Industry Association (''Corporate Actions Division'').[3] Prior to March 1998, DTC ran its lotteries based on participants' positions as of the close of business on the day prior to publication date (''call publication date'').[4]

DTC is proposing to change the date for the allocation in the call lottery only

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] See Securities Exchange Act Release 34–39658 (February 20, 1998) 63 FR 8726 [File No. SR–DTC–97–14].

[4] For a discussion of DTC's call lottery process, refer to Securities Exchange Act Release Nos. 21523 (November 27, 1984), 49 FR 47352 [File No. SR–DTC–84–09] (notice of filing and immediate effectiveness of proposed rule change); 30552 (April 2, 1992) 57 FR 12352 [File No. SR–DTC–90–02] (order temporarily approving a proposed rule change by DTC relating to the establishment of a procedure to recall certain deliveries which have created short positions as a result of call lotteries); 35034 (November 30, 1994) 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of proposed rule changes to establish procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits); 36651 (December 28, 1995) 61 FR 429 [File No. SR–DTC–95–21] (order granting accelerated permanent approval of a proposed rule change concerning short position reclamation procedures); and 34–39658 (February 20, 1998) 63 FR 8726 [File No. SR–DTC–97–14] (order approving proposed rule change regarding call lottery procedures for BEO securities).

for calls of BEO securities in which DTC is notified of the call after the redemption date has passed. Allocation lotteries for other calls of BEO securities, where notice is received on or before the redemption date, will continue to be run using participants' positions as of the DTC call announcement date.

When the call notice is received by DTC after the redemption date, the DTC call announcement date is necessarily after the date as of which the called securities are deemed to have been redeemed by the issuer. Use of the DTC call announcement date in these instances can have an adverse impact on participants and their customers who have acquired a security position during the period between the redemption date and the DTC call announcement date because they have acquired the called security without notice that the security has been redeemed. Therefore, for call notices received after the redemption date, DTC proposes to process its call lottery with reference to participant positions as of the close of business on the day prior to the call publication date. Use of the call publication date to determine lottery allocations is consistent with DTC's procedures for lotteries in certificated issues.

DTC's proposed rule change is designed to mitigate the negative impact of calls of BEO securities which are processed through DTC's lottery process after the redemption date due to late notification from the issuer. The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions and, in general, furthers the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC has discussed the proposed rule change with participants and the Corporate Actions Division of the Securities Industry Association. DTC presented the proposed rule change to the Board of Directors of the Corporate Action Division on March 23, 1999. Further discussions between DTC and the Corporate Actions Division took place on September 15, 1999. No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and 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, NW, 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, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file No. SR–STC–99–22 and should be submitted by January 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33547 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42242; File No. SR–NASD–99–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Head Trader Alert 1999–60 Regarding the Nasdaq Application of the OptiMark System

December 16, 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 November 5, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 on November 23, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing an interpretation of NASD Rule 4991(h) that was issued in Head Trader Alert Number 1999–60. The interpretation affects the Nasdaq Application of the OptiMark System (the ''Nasdaq Application''). The text of the proposed rule change is available at the Association 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, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq explained the ''N'' modifier that may be attached to a SelectNet order that is the result of an OptiMark match, and clarified the use of the C999 modifier by market participants outside of the OptiMark system. Letter from Peter R. Geraghty, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 22, 1999.

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 SEC recently approved a proposed rule change filed by the NASD to implement the Nasdaq Application.[4] The Nasdaq Application permits NASD members and their customers to enter large orders in Nasdaq stocks into an anonymous matching system that has been designed, developed, and patented by OptiMark Technologies, Inc. (''OptiMark Match'') and has been integrated into Nasdaq's facilities in Trumbull, Connecticut. The NASD believes that the anonymity offered by this facility limits the market impact of trading in large size and provides NASD members with a new, additional tool to trade Nasdaq securities more effectively.

The Nasdaq Application allows NASD members (and if sponsored by NASD members, customers of such members) to enter trading interests, called profiles, into Nasdaq-operated systems where those profiles are collected and matched periodically by the OptiMark Match. As currently approved, these matches occur no more frequently than every five minutes. In addition to matching profiles entered directly into the system, the Nasdaq Application incorporates bids and offers in the Nasdaq Quote Montage, creates profiles for such quotes, and includes the profiles in the next match. The OptiMark Match then attempts to match contra interests at the best prices and sizes according to the rules of the match process. If the system finds that a Nasdaq Quota Montage profile matched with another profile, the system sends a message to the market participant via the Nasdaq SelectNet system, seeking to trade at the market participant's quoted price or better and at round lot sizes, up to the amount quoted by that market participant.

Nasdaq believes that the rules approved by the SEC in October 1999[5] clearly implied that Nasdaq subscribers that respond to SelectNet messages sent as a result of OptiMark entered profiles matching with quoted interest displayed in the Nasdaq Quote Montage profiles must respond in round lot sizes only. Specifically, Nasdaq intended that Rule 4991(h) require such a response in that Rule 4991(h) stated that orders in the Nasdaq Application ''shall be in round lots equal to or greater than 1,000 shares, except for * * * Quote Montage Profiles * * * that may be in any round lot size. * * *''

Therefore, Nasdaq issued a Head Trader Alert to firms explaining that the rules related to the OptiMark system specifically intended to require that responses to SelectNet messages sent as a result of an OptiMark Match with a Nasdaq Quote Montage profile must be made in round lot sizes, and that the C999 modifier is intended to signal the receiving market participant that it must respond in round lots only. The Head Trader Alert also noted that Rule 3380(b) should not be interpreted as permitting an ECN to reject a SelectNet message from an OptiMark match with the C999 modifier. Nasdaq notes that the requirement that an ECN or other market participant deal only in round lots when responding to a SelectNet message sent as a result of an OptiMark match is implied only by the rules governing the Nasdaq Application of the OptiMark System. Other market participants sending SelectNet messages to ECNs are not permitted to use the C999 modifier in such circumstances.

In addition, the Head Trader Alert explained another modifier that is attached to SelectNet orders sent as a result of OptiMark matches. This modifier is the letter ''N'' which is intended to convey to the recipient of the order that the order is non-negotiable. However the Not Negotiable modifier ''N'' on a SelectNet order following the price allows the recipient of the order to price improve the order and execute it at a price better than that found in the price field. The ''N'' modifier does not allow the recipient to enter a counter offer at an inferior price against the order. For example, a firm receiving an order to sell at 10 with the Not Negotiable indicator may not send a counter offer on the order at 9⅞, but they may price improve the order at 10 1/16.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A[6] of the Act in general and furthers the objectives of Section 15A(b)(6)[7] in particular because it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.[8]

Nasdaq believes that the proposed rule change is consistent with provisions of Section 11A[9] of the Act in general and furthers the objectives of Section 11A(a)(1)(C)[10] in particular because it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among brokers and dealers, availability to brokers, dealers and investors of information with respect to quotations and transactions in securities, and practicability of brokers executing investors' orders in the best market.

Nasdaq believes that the proposal is consistent with Section 15A(b)(6)[11] and Section 11A(a)(1)(C)[12] of the Act because it will inform firms about two modifiers that may be attached to SelectNet messages sent as a result of an Optimark match related to round lot only messages and price improvement, and will clarify a firm's obligations in responding to SelectNet orders generated by an OptiMark match.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[13] and subparagraph (f)(l) of Rule 19b-4 thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the

[4] Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999).

[5] *Id.*

[6] 15 U.S.C. 78o-3.

[7] 15 U.S.C. 78o-3(b)(c).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k-1.

[10] 15 U.S.C. 78k-1(a)(1)(C).

[11] 15 U.S.C. 78o-3(b)(6).

[12] 15 U.S.C. 78k-1(a)(1)(C).

[13] 15 U.S.C. 78s(b)(3)(A)(i).

[14] 17 CFR 240.19b-4(f)(1).

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 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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–99–68 and should be submitted by January 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33546 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42249; File No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of the Nasdaq Order Display Facility and Modifications of the Nasdaq Trading Platform

December 17, 1999.

On October 1, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') a proposal relating to the establishment of the Nasdaq Order Display Facility and modifications of the Nasdaq Trading Platform. Notice of the proposed rule change was published for comment on December 6, 1999.[1]

To give the public additional time to comment on the proposal, the Commission is extending the comment period to January 11, 2000. A copy of the proposed rule change is available in the Commission's Public Reference Room in File No. SR–NASD–99–53.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Securities Exchange Act of 1934. Persons making written submissions should file six copies thereof with Jonathan G. Katz, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–53 and should be submitted by January 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33548 Filed 12–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 42116 (November 22, 1999), 64 FR 68125.

[2] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42248; File No. SR–PCX–99–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Specialist Evaluation Pilot Program

December 17, 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 November 2, 1999, the Pacific Exchange, Inc. (''PCX'' 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. On December 6, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The Exchange seeks permanent approval of its Specialist Evaluation Pilot Program.

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 PCX 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 III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert Pacileo, Staff Attorney, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated December 6, 1999 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested permanent approval of the specialist evaluation pilot program on an accelerated basis.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 1, 1996, the Commission approved a nine month pilot program for evaluating PCX equity specialists using a number of criteria.[4] On December 22, 1997, the Commission approved a one-year extension of the Exchange's pilot program for the evaluation of equity specialists.[5] That rule change established an overall score and individual passing scores for specialists, replaced the ''Bettering the Quote'' criterion with a ''Price Improvement'' criterion, and lowered the weighting of the ''Specialist Evaluation Questionnaire'' criterion from 15% to 10%, so that Price Improvement could be given a weight of 10%. Subsequently, on May 8, 1998, the Commission approved an Exchange proposal to codify these changes.[6] The Commission later approved another one-year extension of the Exchange's pilot program to January 1, 2000.[7] The program currently measures specialist performance under the following criteria, among others, trading between the quote, executions in size greater than the National Best Bid or Offer, Price Improvement, and answers to specialist evaluation questionnaire.

The Exchange is now proposing to make the program permanent. On October 29, 1999, the Exchange submitted a required report to the Commission responding to particular questions set forth in the December 1997 approval order.[8] The Exchange believes that this program is operating successfully and without any problems and, on that basis, the Exchange believes that permanent approval of the Specialist Evaluation Pilot Program is warranted.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change would 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

Written comments on the proposed rule change were neither solicited nor received.

III. 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 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 PCX. All submissions should refer to File No. SR–PCX–99–46 and should be submitted by January 18, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks. Among the obligations imposed upon specialists under the Act is the maintenance of fair and orderly markets in their designated securities. To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The Commission believes that the PCX's specialist evaluation program can play an important role regarding to this oversight.

The Exchange's specialist evaluation pilot program has undergone several changes since it was first implemented in 1996. However, the Commission believes that the pilot program in its current form has generated, and will continue to generate, sufficiently, detailed information to enable the Exchange to make accurate assessments of specialist performance. For example, the overall passing score and individual criterion passing scores establish minimum adequate performance thresholds. These thresholds allow the Exchange to identify specialists who are not operating at an acceptable level of performance. In its October 1999 report, the Exchange noted that all specialists attained the overall passing score in the first three quarters of 1999. The report also noted, however, the number of specialists who did not attain a passing score in one or more of the individual criteria for the specified period of time (*e.g.,* four out of five quarters). The report specified the restrictions placed on the failing specialists (*e.g.,* no new allocations).

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)[11] of the Act. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange be designed to facilitate transaction in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The criteria used to assess the

[4] *See* Exchange Act Release No. 37770 (October 1, 1996), 61 FR 52820 (October 8, 1996).

[5] *See* Exchange Act Release No. 39477 (December 22, 1997), 62 FR 68334 (December 30, 1997).

[6] *See* Exchange Act Release No. 39976 (May 8, 1998), 63 FR 26834 (May 14, 1998).

[7] *See* Exchange Act Release No. 40817 (December 21, 1998), 63 FR 71993 (December 30, 1998).

[8] The December 1998 approval order required the Exchange to submit a report containing the information described in the December 1997 order. *See* Release No. 40817, *supra* note 6. The December 1997 approval order requested a report containing data on (1) the number of specialists who, as a result of failing the overall passing score in any one quarterly evaluation, appeared before the Equity Allocation Committee (''EAC''); (2) the number of specialists who, as a result of failing the overall passing score in any three out of four quarters, appeared before the EAC; (3) the number of specialists who, as a result of failing any individual criterion passing score for at least two consecutive quarters, appeared before the EAC; (4) the number of specialists who, as a result of scoring in the bottom 10% in any one quarterly evaluation, appeared before the EAC; and (5) the number of specialists who, as a result of scoring in the bottom 10% in any two out of four consecutive quarterly evaluations, appeared before the EAC. The report included any type of restrictions that were imposed on these specialists, any further action that was taken against these specialists, and any situation in which the restrictions were not imposed due to mitigating circumstances. The report also included the number of specialists for whom formal proceedings were initiated and the results of such proceedings, and the number of registered specialists who scored in the bottom 10% of all registered specialists on his or her trading floor in the overall program.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

performance of PCX equity specialists (*e.g.,* price improvement and trading in size greater than the NBBO) are appropriate means of helping to determine whether a PCX equity specialist in performing its specialist duties to maintain a fair and orderly market.[13]

Further, the Commission finds that the proposal is consistent with the Act, particularly section 11(b)[14] of the Act and Rule 11b–1[15] under the Act, which allows securities exchanges to permit exchange members to register as specialists, providing that the exchange requires the specialist to assist in maintaining a fair and orderly market. As discussed, the means PCX has chosen to assess those duties and the means of sanctioning specialists who fail to meet their obligations (*e.g.,* restrictions on further stock allocations) are appropriate and consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register.** The Exchange has stated that the program is operating successfully and without any problems. Accelerated approval will permit the Specialist Evaluation program to continue on an uninterrupted basis. In addition, the rule change that implemented the pilot program in its current form and the rule change that subsequently extended pilot program were noticed for the full statutory period and the Commission received no comments on the proposed rule changes. Accordingly, the Commission does not believe that the current filing raises any regulatory issues not raised in the previous filings.

It is therefore ordered, pursuant to Section 19(b)(2)[16] of the Act, that the proposed rule change (SR–PCX–99–46), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33636 Filed 12–27–99; 8:45]

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[13] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78k(b).

[15] 17 CFR 240.11b–1.

[16] 15 U.S.C. 78s(b)(2).

[17] CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3174]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The purpose of the meeting will be for the members to look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee. In addition, the Committee members will review the activities of the various working groups of the Advisory Committee.

This meeting will be held on Thursday, January 20, 2000, from 9:30 a.m.–12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, N.W., Washington, D.C. 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: December 20, 1999.

Timothy C. Finton,

Executive Secretary of the Advisory Committee on International Communications and Information Policy, U.S. Department of State.

[FR Doc. 99–33651 Filed 12–27–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice No. 3185]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 10 A.M. on Wednesday, January 19, 2000, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Flag State Implementation (FSI) Subcommittee of the International Maritime Organization (IMO) which is scheduled for January 24–28, 2000, at the IMO Headquarters in London. At this meeting, the U.S. position on documents submitted for consideration at the eighth session of the FSI Subcommittee will be discussed.

Among other things, the items of particular interest are:

1. Responsibilities of Governments and measures to encourage flag State compliance;
2. Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
3. Self-assessment of flag State performance;
4. Implications arising when a vessel loses the right to fly the flag of a State;
5. Revision of Survey Guidelines (A.746(18)) and Guidelines on Surveys (A.560(14));
6. Guidelines for unscheduled inspections of roll-on/roll-off (ro-ro) passenger vessels;
7. Introduction of the Harmonized System of Survey and Certification (HSSC) into MARPOL Annex VI on prevention of air pollution;
8. Analysis and evaluation of deficiency reports and mandatory reports under the International Convention for the Prevention of Marine Pollution from Ships 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
9. Casualty statistics and investigations;
10. Regional cooperation on port State control;
11. Results of inspections; and,
12. Mandatory reporting procedures on port State control detentions.

Members of the public may attend the meeting up to the capacity of the room. Interested persons may seek information by contacting Mr. David Deaver, U.S. Coast Guard Headquarters (G–MOC–4), 2100 Second Street, SW, Room 1116, Washington, DC 20593–0001; telephone: (202) 267–0502; email: ddeaver@comdt.uscg.mil.

Dated: December 20, 1999.

Stephan M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 99–33652 Filed 12–27–99; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment Regarding Negotiations Toward a Free Trade Area of the Americas

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) seeks public comment as part of its efforts to develop proposals and positions concerning toward the Free Trade Area of the Americas (FTAA). The TPSC seeks public comment with respect to all aspects of the FTAA negotiations.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the FTAA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs at (202) 395–5190. Additionally, the official FTAA website (*www.ftaa-alca.org*) contains information regarding the FTAA process, including official documents.

SUPPLEMENTARY INFORMATION:

1. Background

FTAA Chronology

Miami Summit of the Americas. On December 11, 1994, President Clinton and the 33 other democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on a Free Trade Area of the Americas (FTAA) no later than the year 2005 and to achieve concrete progress toward that objective by the end of this century. The Miami Declaration of Principles and Plan of Action announced the agreements reached by the leaders at the first Summit of the Americas. With respect to the FTAA, the Plan of Action states in part:

> We will strive to maximize market openness through high levels of discipline as we build upon existing agreements in the Hemisphere. We will also strive for balanced and comprehensive agreements, including among others: tariffs and non-tariff barriers affecting trade in goods and services; agriculture; subsidies; investment; intellectual property rights; government procurement; technical barriers to trade; safeguards; rules of origin; antidumping and countervailing duties; sanitary and phystosanitary standards and procedures; dispute resolution; and competition policy.

The Plan of Action also states:

> Free trade and increased economic integration are key factors for sustainable development. This will be furthered as we strive to make our trade liberalization and environmental policies mutually supportive, taking into account efforts undertaken by the GATT/WTO and other international organizations. As economic integration in the Hemisphere proceeds, we will further secure the observance and promotion of worker rights, as defined by appropriate international conventions. We will avoid disguised restrictions on trade, in accordance with the GATT/WTO and other international obligations.

San Jose Ministerial. The 34 Western Hemisphere ministers responsible for trade met on March 19, 1998 in San Jose, Costa Rica. At the San Jose meeting, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided them recommendations on the structure, objectives, principles, and venues of the negotiations. In this context, the trade ministers proposed the creation of nine negotiating groups and three non-negotiating committees and groups. They also established the Trade Negotiations Committee (TNC) to guide the work of the negotiating groups and decide on the overall architecture of the FTAA agreement and to address institutional issues.

Trade ministers also reiterated that the FTAA negotiations will take into account the broad social and economic agenda contained in the Miami Declaration of Principles and Plan of Action with a view to ''contributing to raising living standards, to improving the working conditions of all people in the Americas and to better protecting the environment.'' The San Jose Ministerial Declaration, as well as the Miami Declaration, can be accessed through the official FTAA website (*www.ftaa-alca.org*).

Santiago Summit of the Americas. On April 18–19, 1998, President Clinton and his 33 counterparts initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which included the establishment of nine negotiating groups to be guided by the principles and objectives agreed by the ministers in San Jose.

The nine negotiating groups established by the FTAA countries are responsible for the following areas of the negotiations: (1) Market access; (2) investment; (3) services; (4) government procurement; (5) dispute settlement; (6) agriculture; (7) intellectual property rights; (8) subsidies, antidumping and countervailing duties; and (9) competition policy. In additional to the nine negotiating groups, three non-negotiating committees and groups were established. They are: (1) The Consultative Group on Smaller Economies; (2) the Committee of Government Representatives on the Participation of Civil Society; and (3) the Joint Government-Private Sector Committee of Experts on Electronic Commerce. The negotiating groups and non-negotiating committees and groups began meeting in September 1998.

Toronto Ministerial Meeting. On November 3–4, 1999, the FTAA ministers met in Toronto to review the progress made by the negotiating groups during the first phase of the negotiations and to determine the next steps to be taken in the FTAA process. The ministers in Toronto expressed approval of the progress made by the negotiating groups and directed them to begin preparing draft texts of their respective chapters, to be completed by the next meeting of FTAA ministers in April 2001.

Committee of Government Representatives on the Participation of Civil Society. At the 1998 meeting in San Jose, the trade ministers jointly recognized and welcomed the interests and concerns expressed by a broad spectrum of interested non-governmental parties in the hemisphere and encouraged these and other parties to provide their views on trade matters related to the FTAA negotiations. In order to facilitate this process, the ministers agreed to establish the aforementioned Committee of Government Representatives on the Participation of Civil Society. The TPSC published a **Federal Register** notice on July 29, 1998 (63 FR 40579) requesting comments on the operation of the Committee, which was mandated to receive, analyze, and report on the full range of comments received from civil society from throughout the

hemisphere. At its first meeting in October 1998, the Committee approved an open invitation soliciting views from the hemisphere's public. The open invitation was placed on the FTAA website and countries agreed to use national mechanisms to disseminate the invitation further. In the United States, the invitation was disseminated through a variety of means, including press releases, letters to advisory committees and public meetings.

Prior to the Toronto Ministerial Meeting, the Committee prepared a report for the Ministers describing the submissions it received from the public. This report has been published on the official FTAA website (www.ftaa-alca.org). Executive summaries of the submissions have also been published on the Department of State website (www.state.gov /www/issues/economic/current__issues.html).

Joint Committee of Experts on Electronic Commerce

At the 1998 meeting in San Jose, the trade ministers noted the rapid expansion of Internet usage and electronic commerce in the hemisphere. In order to increase and broaden the benefits to be derived from the electronic marketplace, they agreed to establish the aforementioned Joint Government-Private Sector Committee of Experts on Electronic Commerce to make recommendations in this area. The TPSC published a **Federal Register** notice on August 5, 1998 (63 FR 42090) requesting comments on the operation of the Joint Committee. Prior to the Toronto Ministerial meeting, the government and private sector experts from throughout the Western Hemisphere prepared a report with over 40 recommendations on how to increase and broaden the benefits of electronic commerce. The Joint Committee's report has been published on the official FTAA website (*www.ftaa-alca.org*).

2. Advice From the U.S. International Trade Commission Regarding Market Access

On March 15, 1999, the U.S. Trade Representative, pursuant to Section 332(g) of the Tariff Act of 1930, requested that the U.S. International Trade Commission (''Commission'') provide advice to the President, with respect to each item listed in the HTSUS where tariffs will remain in effect after full implementation of the results of the Uruguay Round and subsequent WTO agreements (such as the Information Technology Agreement), as to the probable economic effect of modification of tariffs on industries producing like or directly competitive articles and on consumers, based on three scenarios, two of which pertain to the WTO, and the third of which pertains to the FTAA. Those scenarios are: (1) The effects resulting from changes in dutiable imports from all U.S. trading partners if all tariffs were reduced by at least 50 percent, with tariffs of 5 percent reduced to zero; (2) the effects resulting from changes in dutiable imports from all U.S. trading partners if tariffs were eliminated; and (3) the effects resulting from tariff elimination on dutiable imports from FTAA trading partners alone.

3. Public Comments

In conformity with the regulations of the Trade Policy Staff Committee (15 CFR part 2003), the Chairman of the TPSC invites the written comments of interested parties on all aspects of the FTAA negotiations. This includes comments regarding the possible effects of elimination of tariffs on dutiable imports from FTAA countries (scenario 3).

Prior to initiation of negotiating group activity, the TPSC requested public comments (63 FR 128, July 6, 1998) regarding U.S. positions and objectives with respect to each of the negotiating groups. On April 14, 1999, the TPSC announced that it would seek additional public comments in the future on issues related to the FTAA, including the economic effects of the removal of duties and nontariff barriers to trade among FTAA participating countries (64 FR 18469).

The TPSC is now seeking public comments on any aspect of the FTAA negotiations, including the economic effects of the removal of duties and nontariff barriers to trade among FTAA participating countries.

Those persons wishing to submit written comments, should submit twenty (20) typed copies, no later than noon, Monday, February 7, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 Seventeenth Street, N.W., Washington, DC 20508. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, N.W., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–33670 Filed 12–27–99; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Council Bluffs, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed viaduct and roadway project in Council Bluffs, Pottawattamie County, Iowa.

FOR FURTHER INFORMATION CONTACT: Philip Taylor, Assistant Transportation Engineer, Federal Highway Administration, Iowa Division Office, 105 6th Street, Ames, Iowa 50010, Telephone: (515) 233–7307. Harry S. Budd, Director, Office of Project Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone: (515) 239–1391. Mr. Greg Reeder, City Engineer, Council Bluffs Public Works Department, 209 Pearl Street, Council Bluffs, Iowa 51503 Telephone: (712) 328–4635.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*

Background

The FHWA, in cooperation with the Iowa Department of Transportation (Iowa DOT) and the City of Council Bluffs, Iowa will prepare an environmental impact statement (EIS) for the proposed construction of a viaduct on Avenue G over the Union Pacific and Chicago, Central and Pacific railroad corridor that bisects Council Bluffs, Iowa. The proposed project begins at 16th and Avenue G and extends east to 8th Street. From 8th and

Avenue G the proposed project will consider improved roadway connections to Kanesville Boulevard. The total length of the project is approximately 1.6 km (1 mile).

The existing rail corridor is crossed by an over capacity, 4-lane viaduct constructed in the early 1950's and several at-grade crossings. The proposed viaduct crossing is considered necessary to provide for existing and projected traffic demand and to improve public safety in this sector of the City of Council Bluffs.

Alternatives under consideration include: (1) Taking no action; (2) improvement of existing roadway corridors; and (3) a new connecting roadway corridor. The ''new'' roadway scenario will consider various alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public involvement will be sought throughout the analysis of this proposal. In addition, a public hearing will be offered. A scoping meeting will be held for identifying significant issues to be addressed in the environmental impact statement. Public notice will be given of the time and place of all public meetings. The draft EIS will be available for public and agency review prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, Iowa DOT, or the City of Council Bluffs at the addresses provided under the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, highway Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: December 14, 1999.

Bobby Blackmon,

Division Administrator.

[FR Doc. 99–33612 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–22–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Kittitas County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a programmatic environmental impact statement (EIS) will be prepared for a proposed highway project in Kittitas County, Washington.

FOR FURTHER INFORMATION CONTACT: Gene K. Fong, Division Administrator, Federal Highway Administration, 711 South Capital Way, Suite 501, Olympia, WA 98501–0943, telephone: (360) 753–9480; or Leonard Pittman, Regional Administrator, Washington State Department of Transportation, 2809 Rudkin Road, Union Gap, WA 98909, telephone: (509) 575–2530.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), will prepare an EIS for a proposal to improve a 13 mile portion of Interstate 90 (I–90) immediately east of Snoqualmie Pass in the Cascade Mountains, from Hyak (MP 54) to Easton Hill (MP 67).

The proposed improvements are intended to restore degraded highway surfaces, eliminate impediments to trucking, increase traffic capacity and design speed, and reduce closures due to avalanches and avalanche control activities. This highway is the major east-west corridor for truck-borne shipping in Washington; it is also the major east-west route for passenger automobile traffic. The proposed work is between 54 and 67 miles from Seattle. It is immediately east of Snoqualmie Pass in the Cascade Mountains, a popular destination for winter recreation within the state of Washington. I–90 in the Snoqualmie Pass area is subject to heavy traffic flows at all times of the year, with traffic-related slowdowns and stoppages an ongoing concern. Closures due to avalanches and avalanche control activities are common, and in the winter of 1998–1999, record snowfalls made closure frequent. Traffic stoppages on I–90 are costly to the state's economy. Potential issues of concern include fish and their habitat, wildlife habitat connectivity, wetlands, water quality, threatened and endangered species, existing management plans for forests and other areas, slope stability, cultural resources, public safety, and socioeconomic impacts related to traffic flow.

Alternatives under consideration include: (1) Taking no action; (2) resurfacing the deteriorated concrete surface; (3) splitting eastbound from westbound lanes by building new westbound lanes along the opposite (south) side of Keechelus Lake from the existing east and westbound lanes, to rejoin at an undetermined distance southeast of the lake's outlet; (4) adding a third lane each way to connect with the existing 3-lane configuration at each end of the project; (5) straightening curves to increase design speeds, including one possible elevated section over part of an embankment in Keechelus Lake; (6) overpass and snowshed modification to provide adequate clearance for oversize loads; (7) increasing capacity of the existing snowshed to handle 5 snow chutes and protect all lanes. These alternatives are not necessarily exclusive, since some of them accomplish different purposes and may be used in combination with each other. Within the alternatives, there are possible subalternatives.

Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, local agencies affected Indian tribes, private organizations, and citizens who have previously expressed or are known to have an interest in this project. A series of meetings with the public, interested community groups, and governmental agencies will be held beginning in February. In addition, a public hearing will be held after the release of the Draft EIS to receive public and agency comments. Public notice will be given of the time and place of the future meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address or phone number provided above. (Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 15, 1999.

Catherine F. Nicholas,

Transportation and Environmental Engineer, FHWA Washington Division.

[FR Doc. 99–33611 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Best Practices Procurement Manual

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of updates to FTA's Best Practices Procurement Manual.

SUMMARY: FTA periodically updates its Best Practices Procurement Manual. These updates are currently available through the FTA World Wide Web Page and the FTA Office of Procurement.

FOR FURTHER INFORMATION CONTACT: Reginald Lovelace, FTA Office of Procurement, (202) 366–2654. Electronic access to this and other documents concerning FTA's procurement requirements may be obtained through the FTA World Wide Web home page at http://www.fta.dot.gov.

SUPPLEMENTARY INFORMATION: FTA first published its Best Practices Procurement Manual (BPPM or Manual) in 1996. The purpose of the Manual is to assist FTA grantees and their contractors to better understand and implement the FTA third party procurement requirements, found at FTA Circular 4220.1D. Because the agency views the BPPM as a ''living document,'' it has been continuously updated since 1996.

FTA has added the following subjects to the Manual: Procurement Planning and Organization (indefinite delivery contracts); Disadvantaged Business Enterprise (DBE) (comparing the previous and present DBE rules; listing administrative requirements; describing the goals for DBE participation; establishing certification standards and procedures; and discussing exemptions and waivers to the DBE rule); Contract Administration (particularly any changes in a given contract); Closeouts; and Disputes.

FTA intends to publish a fourth edition of the BPPM early next year; that manual will be available through the FTA Office of Procurement, 400 Seventh Street SW, Washington, DC 20590; it can also be downloaded through the FTA Web Page, www.fta.dot.gov.

Dated: December 22, 1999.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 99–33615 Filed 12–27–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—General Accident Insurance Company of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, a Pennsylvania corporation, has formerly changed its name to CGU INSURANCE COMPANY, effective August 2, 1999. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35876, July 1, 1999.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to CGU INSURANCE COMPANY, Philadelphia, Pennsylvania. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $131,739,000 established for the Company as of July 1, 1999, remains unchanged until June 30, 2000.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, at page 35870 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 17, 1999.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–33535 Filed 12–27–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Pennsylvania General Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Pennsylvania General Insurance Company, a Pennsylvania corporation, has formally changed its name to GENERAL ACCIDENT INSURANCE COMPANY, effective August 2, 1999. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35885, July 1, 1999.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to GENERAL ACCIDENT INSURANCE COMPANY, Philadelphia, Pennsylvania. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $18,569,000 established for the Company as of July 1, 1999, remains unchanged until June 30, 2000.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, part 223). A list of qualified companies

is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, at page 35876 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 17, 1999.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–33536 Filed 12–27–99; 8:45 am]

BILLING CODE 4810–35–M

U.S. TRADE DEFICIT REVIEW COMMISSION

Notice of Open Hearing

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S. Trade Deficit Review Commission.

Name: Murray Weidenbaum, Chairman of the U.S. Trade Deficit Review Commission.

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U.S. trade deficit. The purpose of this public hearing is to take testimony on the role played by United States participation in NAFTA and U.S.—Latin American trade in the causes and consequences of the U.S. trade deficit.

Background

In fulfilling its statutory mission, the Commission is holding field hearings to collect input from industry and labor leaders, government officials, leading researchers, other informed witnesses, and the public.

Professor Murray Wiedenbaum of Washington University, St. Louis, who is a former Chairman of the President's Council of Economic Advisors, chairs the Commission. The Vice Chairman is Professor Dimitri Papadimitriou, President of The Jerome Levy Economics Institute at Bard College, Annandale-on-Hudson, New York. The Dallas hearing will be chaired by the Honorable Carla A. Hills, Commissioner.

Purpose of Hearing

In light of the ongoing massive trade and current account deficits incurred by the United States, progress in improving U.S. exporters' access to foreign markets is critically important. The failure of the WTO Ministerial in Seattle to come up with a negotiating agenda for a new round of multilateral trade negotiations highlights how the consensus on reducing barriers to trade has fractured. Rebuilding the consensus on trade issues in the United States is of critical importance in addressing the large U.S. trade deficits. The work of the Commission, by analyzing the U.S. trade deficits in a non-partisan manner with the input of leading experts, will provide a reasoned and informed answer on how to respond to the trade deficit and its consequences. The findings of the Commission, while not binding, will likely form the basis for Congressional consensus building on trade policy as we enter the next century.

There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATE AND TIME: Friday, January 21, 2000, 8:30 am–5 pm Central Standard Time inclusive.

ADDRESS: The hearing will be held in the 2nd Floor Auditorium of the Federal Reserve Bank of Dallas, 2200 North Pearl, Dallas, TX 75201. Public seating is limited to 75 to 100 seats and will be on a first come first served basis. Commercial public parking lots are available within the vicinity of the Bank.

SECURITY REQUIREMENTS: The Dallas Federal Reserve Bank is a secure facility and everyone must abide by security procedures. Everyone entering the facility is required to have a picture identification.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contact Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1409; or via e-mail at: kmichels@sso.org.

Providing Oral or Written comments at the Dallas Hearing

Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by January 14, 2000. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing. Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Pub. L. 105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the fourth in a series of field hearings to be conducted. The schedule of hearings is available at the US Trade Deficit Review Commission website <www.ustdrc.gov>.

For the U.S. Trade Deficit Review Commission.

Dated at Washington, DC, December 20, 1999.

Allan I. Mendelowitz,

Executive Director, U.S. Trade Deficit Review Commission.

[FR Doc. 99–33576 Filed 12–27–99; 8:45 am]

BILLING CODE 6820–46–P

Corrections

Federal Register

Vol. 64, No. 248

Tuesday, December 28, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–015]

Williams Gas Pipeline Central, Inc.; Notice of Filing of Refund Report

Correction

In notice document 99–32815 appearing on page 71132 in the issue of Monday, December 20, 1999, the docket is corrected to read as set forth above.

[FR Doc. C9–32815 Filed 12–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97-12

Correction

In notice document 99–32699 appearing on page 70762 in the issue of Friday, December 17, 1999, make the following correction:

In the first column, under the heading **DATES:**, ''January 18, 2000'' should read ''February 15, 2000''.

[FR Doc. C9–32699 Filed 12–27–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
December 28, 1999

Part II

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for Section 8 Housing Assistance Payments Program, FY 2000; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4496–N–03]

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2000 Fair Market Rents (FMRs) for manufactured home spaces.

SUMMARY: FMRs for the rental of manufactured home spaces in the Section 8 housing choice voucher program are now generally 40 percent of the applicable Section 8 existing housing program FMR for a two-bedroom unit, rather than 30 percent. This reflects the change in the statute (section 545 of the Quality Housing and Work Responsibility Act of 1998) which provides that the rent for the space with respect to which assistance payments are to be made shall include tenant-paid utilities.

This change was made effective in the recent **Federal Register** (October 21, 1999; publication, ''Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program; Final Rule'') which revised 24 CFR 888.113.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Alan Fox, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, Extension 5863 (e-mail: alan fox@hud.gov). Hearing-or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the voucher program, the FMR is used to determine the ''payment standard'' (the maximum monthly subsidy) for assisted families (see § 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. The FMR for the rent of manufactured home spaces (''pad rent'') is referenced in § 888.113(e) and § 982.623 of the housing choice voucher program rule.

Manufactured Home Space Surveys

FMRs for the rental of manufactured home spaces in the Section 8 housing choice voucher program are generally 40 percent of the applicable Section 8 existing housing program FMR for a two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where 40 percent of the FMRs is thought to be inadequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must contain statistically valid survey data that show the 40th percentile space rent (including the cost of utilities) for the entire FMR area. Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the other FMRs.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 Program.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 13132, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 14.855, Section 8 Rental Voucher Program and 14.857, Section 8 Rental Certificate Program.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: December 17, 1999.

Andrew M. Cuomo,

Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. FMRs for Manufactured Home Spaces

FMRs for manufactured home spaces in the Section 8 housing choice voucher program are 40 percent of the two-bedroom Section 8 existing housing program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Schedule D has been revised to reflect the new 40 percent standard; exceptions that were less than 40 percent of the current FMR have been eliminated, because the area would be better off using 40 percent of the FMR. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the Section 8 existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces in the Section 8 housing choice voucher program are the same as the area definitions used for other FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

a. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State, followed by metropolitan areas and then nonmetropolitan counties.

SCHEDULE D: FY 2000 40TH PERCENTILE FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 CHOICE HOUSING PROGRAM: AREAS WITH APPROVED EXCEPTIONS ABOVE 40 PERCENT OF 2-BEDROOM FMR

Area name	Space rent including utilities
California:	
Los Angeles, CA	$383
Orange County, CA	468
Riverside-San Bernardino, CA	304
San Diego, CA	423
San Jose, CA	489
Colorado:	
Boulder-Longmont, CO	344
Denver, CO	327
Maryland:	
Hagerstown, MD	220
Minnesota:	
Minneapolis-St. Paul, MN–WI	275
Nevada:	
Reno, NV	289
New York:	
Dutchess County, NY	371
Newburgh, NY–PA	349
Rochester, NY	245
Utica-Rome, NY	220
Oregon:	
Portland-Vancouver, OR–WA	284
Deschutes County, OR	259

Areas listed here have approved mobile home space rents higher than 40 percent of the 2 bedroom Fair Market Rent for the area.

[FR Doc. 99–33500 Filed 12–27–99; 8:45 am]

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federal register

Tuesday
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Part III

Department of Housing and Urban Development

24 CFR Part 180

Civil Penalties for Fair Housing Act Violations; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 180

[Docket No. FR–4302–F–03]

RIN 2529–AA83

Civil Penalties for Fair Housing Act Violations

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts revisions to HUD's regulations governing hearing procedures for civil rights matters made effective by an interim rule published on February 10, 1999. These revisions implement two important changes in the way civil penalties are assessed in fair housing cases. First, they allow an administrative law judge (ALJ) to assess a separate civil penalty against a respondent for each separate and distinct discriminatory housing practice committed by the respondent. Second, they require an ALJ to take into account, in favor of imposing a maximum civil penalty, a finding that a respondent has committed a housing-related hate act. This final rule takes into consideration public comments received on the February 10, 1999 interim rule. After careful consideration of the public comments, HUD has decided to adopt the interim rule without change.

DATES: *Effective Date:* January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Office of the Associate General Counsel for Fair Housing, Room 10270, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–0570 (this is not a toll-free telephone number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The ''Make 'Em Pay'' Initiative

This rulemaking was initiated in response to President Clinton's ''Make 'Em Pay'' (MEP) Initiative, announced on November 10, 1997. The MEP Initiative is designed to increase enforcement of the Fair Housing Act (42 U.S.C. 3601–3619), particularly in the case of housing-related acts of violence and intimidation.

This final rule implements two aspects of the MEP Initiative. First, an administrative law judge (ALJ) may now assess a separate civil penalty against a respondent for each separate and distinct discriminatory housing practice committed by the respondent. Second, an ALJ is required to take into account, in favor of imposing a maximum civil penalty, a finding that a respondent has committed a housing-related hate act.

II. The December 18, 1997 Proposed Rule

This rulemaking was initiated by the publication of a proposed rule on December 18, 1997 (62 FR 66488). The proposed rule advised that it would amend HUD's regulations at 24 CFR part 180 (entitled ''Hearing Procedures for Civil Rights Matters'') to allow an ALJ to assess more than one civil penalty against a given respondent, where the respondent has committed separate and distinct acts of discrimination. The proposed rule also advised that it would amend part 180 to require ALJs to consider housing-related hate acts in determining the amount of a civil penalty assessed against a respondent found to have committed a discriminatory housing practice.

In addition to the substantive amendments described above, the December 18, 1997 proposed rule advised of a proposed structural change to 24 CFR part 180. Specifically, the December 18, 1997 rule proposed to move certain provisions governing the assessment of civil penalties found at § 180.670(b)(3)(iii)(A), (B), and (C) to a new § 180.671 (entitled ''Assessing civil penalties for Fair Housing Act cases''). HUD proposed this change to make the part 180 regulations easier to understand.

III. The February 10, 1999 Interim Rule

The rulemaking process was continued with the publication of an interim rule on February 10, 1999 (64 FR 6744). During the comment period for the December 18, 1997 proposed rule, HUD received six public comments. A discussion of these public comments was published in the preamble to the interim rule. In response to the public comments, we clarified the definition of ''separate and distinct housing practice'' in § 180.671(b) and revised the definition of ''housing-related hate act'' in § 180.671(c)(2)(ii). The interim rule made the revised regulations effective as of March 12, 1999, and solicited additional public comment on the amendments to 24 CFR part 180.

IV. This Final Rule

This final rule adopts the regulations made effective by the interim rule published on February 10, 1999 without change. The public comment period for the interim rule closed on April 12, 1999. HUD received two comments, both from trade associations. We carefully considered the issues raised by the commenters and appreciate the suggestions offered by them. For the reasons discussed below, however, we chose not to implement their suggestions. This section of the preamble presents a summary of the issues raised by the public commenters and HUD's responses to their comments.

Comment—ALJs should be required to consider the amount and quality of compliance guidance supplied by HUD when determining the amount of a civil penalty. One commenter was concerned about housing providers being held responsible for violations of unclear or ambiguous fair housing regulations and guidance, and whether these respondents would receive fair and consistent assessments. The commenter suggested that an additional factor should be included in § 180.671(c) (entitled ''Factors for consideration by ALJ'') that requires ALJs to consider the amount and quality of compliance guidance supplied by HUD when determining the amount of a civil penalty.

The commenter proposed the following language for this additional factor: ''Whether HUD has given notice previous to the allegations in this case, through a promulgated rule or regulation, and has made clear in that rule or regulation the act, transaction, or occurrence that constitutes the alleged separate and distinct discriminatory housing practice.''

The commenter also suggested that HUD undertake a thorough review of our fair housing regulations and guidance to ensure that they are clear and understandable to the broader regulated community.

HUD Response. We believe that § 180.671(c) provides substantial protections for respondents with differing circumstances and levels of culpability. Among the six factors laid out in § 180.671(c), four address the commenter's concerns. Section 180.671(c)(iii) requires an ALJ to consider the nature and circumstance of the violation. Section 180.671(c)(iv) specifically requires an ALJ to consider a respondent's degree of culpability when determining the amount of a civil penalty. Section 180.671(c)(v) requires an ALJ to consider the goal of deterrence. Finally, § 180.671(c)(vi) requires the ALJ to consider other matters as justice may require.

The cumulative effect of these provisions is to provide an ALJ with the opportunity to consider the fairness of any penalty. An ALJ may consider the

level of intent a respondent had in violating the Fair Housing Act. The ALJ may also consider whether the respondent was provided with sufficient guidance. Determining appropriate justice, as with any judicial proceeding, is a complex process. This final rule provides an ALJ with substantial flexibility to fashion an appropriate remedy.

Regarding the suggestion that HUD should undertake a thorough review of its fair housing regulations and guidance, we appreciate the suggestion and agree that clear guidance is very important. While we are not in a position to institute a complete formal review of all our fair housing regulations at this time, it should be emphasized that HUD is committed to producing clear guidance, and, therefore, we strive on a continuing basis to ensure that all of our fair housing regulations and guidance are clear and understandable.

For example, in the case of the regulations adopted by this final rule, we reviewed part 180 in its entirety during the development of the proposed rule. As a result of this review, we simplified § 180.670 by creating a new § 180.671. The purpose of this change was to make the part 180 regulations easier to understand. In addition, we revised the definitions of the terms ''separate and distinct housing practice'' and ''housing-related hate act'' in response to public comments on the proposed rule. The revised definitions were also designed to improve the clarity of the regulations.

Comment—HUD must address subtitle B of the Small Business Regulatory Enforcement Fairness Act. One commenter wrote that HUD had not adequately addressed subtitle B of the Small Business Regulatory Enforcement Fairness Act (SBREFA). In particular, the commenter wrote that ALJs must be informed of SBREFA's civil penalty reduction/waiver provisions and that ALJs must be required to consider these provisions when determining the amount of a civil penalty.

HUD Response. This issue was raised in a comment to the December 19, 1997 proposed rule and was addressed in the preamble to the February 10, 1999 interim rule. As stated in HUD's response in the interim rule, we believe that the six factors that ALJs consider when determining the amount of a civil penalty are consistent with subtitle B of SBREFA. Section 223, the relevant section of subtitle B, provides in part that:

> Each agency regulating the activities of small entities shall establish a policy or program * * * to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

This final rule addresses this requirement in § 180.671(c)(1)(ii), which requires an ALJ to consider the respondent's financial resources when determining the amount of a civil penalty. To the extent a small entity may have less financial ability to pay a civil penalty, § 180.671(c)(1)(ii) permits an ALJ to assess a lower civil penalty.

In addition, HUD is cognizant that section 222 of SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.''

To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

> The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in our notice describing HUD's actions on implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

Comment—HUD should clarify that publishing the same discriminatory advertisement on multiple days constitutes only one act of housing discrimination. One commenter was concerned that, under the revisions adopted by this final rule, a newspaper publisher would be held liable for multiple civil penalties for publishing the same discriminatory advertisement on multiple days. The commenter noted that: (1) Newspapers receive a high volume of daily telephone calls requesting the placement of classified advertisements; (2) newspaper employees taking those calls often only have a brief period in which to take the pertinent information; and (3) usually, advertisers placing real estate advertisements ask that they be published multiple times.

The commenter urged HUD to revise the final rule to clarify that: (1) the publication of a discriminatory advertisement multiple times does not constitute multiple acts of discrimination; and (2) an ALJ may not assess multiple civil penalties against the publisher of the newspaper.

HUD Response. HUD believes that the final rule provides sufficient protection for newspaper publishers. First, under HUD's advertising guidelines,[1] newspapers will only be held responsible for publishing an advertisement that violates the Fair Housing Act, if the advertisement is discriminatory on its face. For example, an advertisement that states ''whites only'' would constitute an advertisement that is discriminatory on its face. We believe that it is reasonable to require that even large and busy newspapers avoid publishing such explicitly discriminatory advertisements.

Second, in response to this comment, we considered adding a ''bright line'' standard to the rule that would dictate the exact circumstances when publishing the same discriminatory advertisements on multiple occasions would be considered multiple acts of housing discrimination. We concluded, however, that because of the myriad of possible scenarios that might occur, the determination should be made by the ALJ hearing the case, based upon the specific facts of the case. We believe that an ALJ is in the best position to make the determination as to which cases are suitable for such treatment. As the final rule does not *require* an ALJ to assess multiple civil penalties, even in cases that clearly involve multiple

[1] Memorandum from Roberta Achtenberg, former HUD Assistant Secretary for Fair Housing and Equal Opportunity, to FHEO Office Directors, Enforcement Directors, Staff, Office of Investigations, Field Assistant General Counsel, Subject: Guidance Regarding Advertisements Under § 804(c) of the Fair Housing Act (Jan. 9, 1995). This Guidance memorandum is publicly available on the National Fair Housing Advocate's WWW site at http://www.fairhousing.com/hud_resources/hudguid2.htm (current as of the date of publication of this rule).

separate and distinct discriminatory housing practices, a respondent faced with possible multiple civil penalties may present any possible arguments to the ALJ.

Comment—Newspaper publishers should be given the opportunity to correct discriminatory advertisements. One commenter urged HUD to consider changing its regulations to require a prospective aggrieved person to notify a newspaper publisher of an alleged violation to give the publisher an opportunity to contact the advertiser and request revisions to the advertisement before HUD accepts and investigates the aggrieved person's allegations.

HUD Response. We appreciate the commenter's suggestion. The suggestion, however, requests changes to HUD's procedures for accepting and investigating fair housing complaints. This final rule only concerns revisions to HUD's regulations covering the assessment of civil penalties. The suggestion, therefore, is outside the scope of this rulemaking and was not considered in the preparation of this final rule.

V. Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the Council on Environmental Quality regulations and 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this final rule are determined not to have the potential of having a significant impact on the human environment and are therefore exempt from further environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule and in so doing certifies that the final rule is not anticipated to have a significant economic impact on a substantial number of small entities. This final rule explicitly interprets the Fair Housing Act to allow ALJs to assess a separate civil penalty against a respondent who has been found to have committed separate and distinct acts of discrimination. The rule also amends 24 CFR part 180 to describe how ALJs are to consider housing-related hate acts under the six factors ALJs apply in determining the amount of a civil penalty to assess against a respondent found to have committed a discriminatory housing practice.

The rule will affect only those few small entity housing providers who are respondents in cases where HUD determines that there is reasonable cause to believe that they have committed multiple violations of the Fair Housing Act and whose cases are then heard before an ALJ. The ALJ may or may not then assess multiple civil penalties against the provider after a hearing comporting with due process requirements. To date, the number of entities who actually become respondents in Fair Housing Act cases before ALJs is extremely small.

For example, in FY 1994, the year when the most administrative fair housing cases (through 1997) were docketed, of the 325 cases HUD charged, 220 elected to be heard in federal court, leaving only 115 to be heard by the ALJs. Of these cases, civil penalties were only assessed against an even fewer number: after hearings in 15 cases, and as part of a consent order in another 12 cases, for a total of 27 cases, or 8.3% of the cases docketed. The average civil penalty was $3,727.77. Only a few of these cases involved multiple acts of housing discrimination.

Furthermore, ALJs have had the authority to assess multiple civil penalties in instances where respondents have been found to commit multiple discriminatory housing practices and have done so in appropriate circumstances. Thus, the economic impact of the rule on small entities should not be substantially greater than that already inherent in the Fair Housing Act.

Finally, the rule will not have a significant economic impact on a substantial number of small entities because it requires ALJs to consider each respondent's ability to pay when assessing one or more civil penalties. Thus, everything else being equal, smaller entities with diminished ability to pay would be subject to lower penalties.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

VI. List of Subjects in 24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

PART 180—HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

Accordingly, the interim rule amending 24 CFR part 180, which was published at 64 FR 6744 on February 10, 1999, is adopted as a final rule without change.

Dated: December 17, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–33501 Filed 12–27–99; 8:45 am]

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federal register

Tuesday
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Part IV

Department of Housing and Urban Development

24 CFR Part 888

Section 8 Housing Assistance Payments Program-Contract Rent Annual Adjustment Factors, Fiscal Year 2000; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

Section 8 Housing Assistance Payments Program-Contract Rent Annual Adjustment Factors, Fiscal Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors; correction.

SUMMARY: This document corrects the Schedule C area definitions for metropolitan statistical areas (MSAs) in the following States: Alabama (Auburn-Opelika), Arizona (Flagstaff), Colorado (Grand Junction), Idaho (Pocatello), Maine (Portland), Mississippi (Hattiesburg), New Hampshire (Boston), New York (Buffalo-Niagara Falls), Oregon (Corvallis), Tennessee (Jackson), and Utah. It also clarifies the names of selected places in Connecticut and Florida. All had been incorrectly categorized or named in Schedule C of the document published in the **Federal Register** on September 24, 1999.

None of the AAFs published in the September 24, 1999 document are being changed by this document; however, for clarity the entire document is being reprinted, and the September 24, 1999 document should be replaced with this one. The Annual Adjustment Factors (AAFs) contained in this document are for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries from October 1, 1999. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development [(202) 708–1234], for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Frank M. Malone, Acting Director, Office of Asset Management and Disposition, Office of Housing [(202) 708–3730], for questions relating to all other Section 8 programs; and Alan Fox, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0590; e-mail alan fox@hud.gov], for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This Notice explains how AAFs are applied. The first section identifies to which programs and under what circumstances AAFs apply. The second section provides an explanation of when and how the statutory 1 percent reduction to AAFs should be applied. The third section describes the actual adjustment procedures. For this purpose, Section 8 programs affected by AAFs are grouped into three categories, each of which uses AAFs differently:

Category 1.—The Section 8 new construction and substantial rehabilitation programs and the moderate rehabilitation program.

Category 2.—The Section 8 loan management (LM) and property disposition (PD) programs.

Category 3.—The Section 8 certificate program and the project-based voucher program.

Next the Notice explains the content and applicability of the two AAF tables included in this Notice and provides detailed information on the geographical coverage of each AAF area. The Notice then explains how to apply AAFs to manufactured home space rentals in the Section 8 tenant-based certificate program.

The Notice closes with a brief explanation of how HUD calculates AAFs.

I. Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs, during the term of the HAP contract. However, the specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used for the Section 8 tenant-based voucher program.

AAFs are not used for budget-based rent adjustments. Contract rents for projects receiving Section 8 subsidies under the loan management program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the property disposition program (24 CFR part 886, subpart C) are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

II. Use of Reduced AAF

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by .01:

—For regular tenancy in the Section 8 certificate program, for all units.

—In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)). The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

This statutory language is now permanent law. Section 2004 of the Balanced Budget Act of 1997 provides that these provisions are in effect through fiscal year 2000 and thereafter (Pub. L. 105–33, approved August 5, 1997).

To implement the law, HUD is again publishing two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 is computed by subtracting 0.01 from the annual adjustment factor in Table 1.

III. Adjustment Procedures

The discussion in this **Federal Register** Notice is intended to provide a broad orientation on adjustment procedures. Technical details and requirements will be described in HUD notices (issued by the Office of Housing

and the Office of Public and Indian Housing).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

—The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).
—The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).
—The Section 8 certificate program (including the project-based certificate [PBC] program) and the project-based voucher program.

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless contract rent is reduced by comparability):

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Program

The same adjustment procedure is used for rent adjustment in the tenant-based certificate program, in the project-based certificate program, and the project-based voucher program. The following procedures are used:

—The Table 2 AAF is always used; the Table 1 AAF is not used.
—The Table 2 AAF is always applied before determining comparability (rent reasonableness).
—Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

AAF Tables

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent. The second column is used where the highest cost utility is not included in the contract rent—i.e., where the tenant pays for the highest cost utility.

AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

—For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
—For the nonmetropolitan parts of these regions; and
—For 96 separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan Area and Deleted Counties

Chicago, IL: DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX: Henderson County
Flagstaff, AZ–UT: Kane County, UT
New Orleans, LA: St. James Parish
Washington, DC–VA–MD–WV: Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan

AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Corrected AAF Area Definitions

Alabama: Lee County (which constitutes the newly-designated Auburn-Opelika, Alabama MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Arizona: Coconino County (Flagstaff, Arizona MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Colorado: Mesa County (which constitutes the Grand Junction, Colorado MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Connecticut: The following place names have been changed from ''town'' to ''city:'' Ansonia, Bridgeport, Danbury, Derby, Hartford, Middletown, Milford, New Britain, New London, Norwich, Shelton, and Waterbury. Naugatuck is now listed as a borough. Newington town and Plainville town in Hartford County, and Colchester town and Lebanon town in New London County are now listed as metropolitan.

Florida: Dade County has been renamed Miami-Dade.

Idaho: Bannock County (the Pocatello, Idaho MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Maine: Long Island town, a part of the Portland, Maine MSA, has been added to the Cumberland County metropolitan part.

Mississippi: Forrest and Lamar Counties (the Hattiesburg, Mississippi MSA) are now listed as metropolitan and removed from the list of nonmetropolitan counties.

New Hampshire: The Rockingham County towns of Seabrook and South Hampton which are part of the Boston MA–NH PMSA are now listed among the CPI areas.

New York: The Buffalo-Niagara Falls, New York PMSA has been removed from the list of CPI areas, and its component counties, Erie and Niagara, are listed as metropolitan counties. This results from the Bureau of Labor Statistics removing the Buffalo-Niagara Falls MSA from its Consumer Price Index survey sample.

Oregon: Benton County (which constitutes the newly-designated Corvallis, Oregon MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Tennessee: Chester County (which is part of the Jackson, Tennessee MSA) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Utah: Kane County (a HUD-designated metropolitan county) is now listed as a metropolitan county and removed from the list of nonmetropolitan counties.

Section 8 certificate program AAFs for manufactured home spaces

For a manufactured home space rental in the old Section 8 tenant-based certificate program, (under a HAP contract entered before the ''merger date'' (10/1/99)), the AAFs in this publication identified as ''Highest Cost Utility Excluded'' are to be used to adjust the rent to owner for the manufactured home space. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section. AAFs are not used for the Section 8 housing choice voucher program.

How Factors Are Calculated

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The ''Highest Cost Utility Included'' column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The ''Highest Cost Utility Excluded'' column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (i.e., paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

Other Matters

Environmental Impact

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(6).

Executive Order 13132, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 13132, *Federalism,* has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following Tables:

Dated: December 17, 1999.

Andrew Cuomo,

Secretary.

BILLING CODE 4210–32–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
New England Metropolitan	1.008	1.013	New England Nonmetropolitan	1.007	1.014
New York/New Jersey Metropolitan	1.005	1.012	New York/New Jersey Nonmetropolitan	1.002	1.009
Mid-Atlantic Metropolitan	1.008	1.018	Mid-Atlantic Nonmetropolitan	1.005	1.018
Southeast Metropolitan	1.006	1.020	Southeast Nonmetropolitan	1.000	1.010
Midwest Metropolitan	1.013	1.019	Midwest Nonmetropolitan	1.005	1.011
Southwest Metropolitan	1.002	1.016	Southwest Nonmetropolitan	1.000	1.017
Great Plains Metropolitan	1.012	1.018	Great Plains Nonmetropolitan	1.005	1.012
Rocky Mountain Metropolitan	1.018	1.022	Rocky Mountain Nonmetropolitan	1.009	1.015
Pacific/Hawaii Metropolitan	1.013	1.018	Pacific/Hawaii Nonmetropolitan	1.004	1.009
Northwest/Alaska Metropolitan	1.005	1.010	Northwest/Alaska Nonmetropolitan	1.008	1.013
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.043	1.051
MSA Anchorage, AK	1.014	1.013	PMSA Ann Arbor, MI	1.027	1.033
MSA Atlanta, GA	1.036	1.038	PMSA Atlantic-Cape May, NJ	1.023	1.027
PMSA Baltimore, MD	1.024	1.026	PMSA Bergen-Passaic, NJ	1.032	1.039
*COUNTY Berkeley, WV	1.023	1.027	PMSA Boston, MA-NH	1.040	1.053
PMSA Boulder-Longmont, CO	1.052	1.056	PMSA Brazoria, TX	1.031	1.037
PMSA Bremerton, WA	1.046	1.054	PMSA Bridgeport, CT	1.030	1.041
PMSA Brockton, MA	1.038	1.054	*COUNTY Brown, OH	1.025	1.020
*Chicago, IL	1.034	1.045	*Cincinnati, OH-KY-IN	1.024	1.021
*COUNTY Clarke, VA	1.023	1.027	PMSA Cleveland-Lorain-Elyria, OH	1.043	1.051
*COUNTY Culpeper, VA	1.024	1.027	*Dallas, TX	1.043	1.050

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
PMSA Danbury, CT	1.031	1.040	*COUNTY De Kalb, IL	1.032	1.047
PMSA Denver, CO	1.051	1.056	PMSA Detroit, MI	1.025	1.034
PMSA Dutchess County, NY	1.031	1.039	PMSA Fitchburg-Leominster, MA	1.039	1.054
PMSA Flint, MI	1.024	1.034	PMSA Fort Lauderdale, FL	1.014	1.018
PMSA Fort Worth-Arlington, TX	1.042	1.050	*COUNTY Gallatin, KY	1.026	1.020
PMSA Galveston-Texas City, TX	1.031	1.037	PMSA Gary, IN	1.029	1.050
*COUNTY Grant, KY	1.025	1.020	PMSA Greeley, CO	1.052	1.056
*COUNTY Grundy, IL	1.030	1.049	PMSA Hagerstown, MD	1.024	1.027
PMSA Hamilton-Middletown, OH	1.024	1.021	*COUNTY Henderson, TX	1.037	1.051
PMSA Houston, TX	1.032	1.037	*COUNTY Jefferson, WV	1.023	1.027
PMSA Jersey City, NJ	1.032	1.038	PMSA Kankakee, IL	1.028	1.051
MSA Kansas City, MO-KS	1.040	1.048	*COUNTY Kendall, Il	1.032	1.046
PMSA Kenosha, WI	1.032	1.047	*COUNTY King George, VA	1.023	1.027
PMSA Lawrence, MA-NH	1.038	1.054	PMSA Los Angeles-Long Beach, CA	1.022	1.029
PMSA Lowell, MA-NH	1.039	1.053	PMSA Manchester, NH	1.039	1.054
PMSA Miami, FL	1.014	1.018	PMSA Middlesex-Somerset-Hunterdon, NJ	1.032	1.038
PMSA Milwaukee-Waukesha, WI	1.023	1.020	MSA Minneapolis-St. Paul, MN-WI	1.027	1.031
PMSA Monmouth-Ocean, NJ	1.031	1.040	PMSA Nashua, NH	1.039	1.053
PMSA Nassau-Suffolk, NY	1.031	1.039	PMSA New Bedford, MA	1.039	1.054
PMSA New Haven-Meriden, CT	1.031	1.039	PMSA New York, NY	1.032	1.037
*COUNTY Westchester, NY	1.033	1.037	PMSA Newark, NJ	1.031	1.039

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
PMSA Newburgh, NY-PA	1.031	1.039	PMSA Oakland, CA	1.070	1.080
*COUNTY Ohio, IN	1.025	1.020	PMSA Olympia, WA	1.046	1.054
PMSA Orange County, CA	1.023	1.029	*COUNTY Pendleton, KY	1.025	1.020
PMSA Philadelphia, PA-NJ	1.023	1.027	PMSA Pittsburgh, PA	1.028	1.040
PMSA Portland-Vancouver, OR-WA	1.039	1.036	PMSA Portsmouth-Rochester, NH-ME	1.039	1.054
PMSA Racine, WI	1.024	1.020	PMSA Riverside-San Bernardino, CA	1.020	1.029
MSA St. Louis, MO-IL	1.018	1.023	PMSA Salem, OR	1.040	1.036
MSA San Diego, CA	1.043	1.050	PMSA San Francisco, CA	1.072	1.080
PMSA San Jose, CA	1.072	1.080	PMSA Santa Cruz-Watsonville, CA	1.070	1.080
PMSA Santa Rosa, CA	1.068	1.080	PMSA Seattle-Bellevue-Everett, WA	1.048	1.054
PMSA Stamford-Norwalk, CT	1.032	1.038	PMSA Tacoma, WA	1.047	1.054
MSA Tampa-St. Petersburg-Clearwater, FL	1.030	1.035	PMSA Trenton, NJ	1.031	1.039
PMSA Vallejo-Fairfield-Napa, CA	1.068	1.080	PMSA Ventura, CA	1.023	1.029
PMSA Vineland-Millville-Bridgeton, NJ	1.022	1.027	*COUNTY Warren, VA	1.024	1.027
*Washington, DC-MD-VA	1.024	1.026	PMSA Waterbury, CT	1.031	1.039
PMSA Wilmington-Newark, DE-MD	1.023	1.027	PMSA Worcester, MA-CT	1.039	1.054

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
New England Metropolitan	1.000	1.003	New England Nonmetropolitan	1.000	1.004
New York/New Jersey Metropolitan	1.000	1.002	New York/New Jersey Nonmetropolitan	1.000	1.000
Mid-Atlantic Metropolitan	1.000	1.008	Mid-Atlantic Nonmetropolitan	1.000	1.008
Southeast Metropolitan	1.000	1.010	Southeast Nonmetropolitan	1.000	1.000
Midwest Metropolitan	1.003	1.009	Midwest Nonmetropolitan	1.000	1.001
Southwest Metropolitan	1.000	1.006	Southwest Nonmetropolitan	1.000	1.007
Great Plains Metropolitan	1.002	1.008	Great Plains Nonmetropolitan	1.000	1.002
Rocky Mountain Metropolitan	1.008	1.012	Rocky Mountain Nonmetropolitan	1.000	1.005
Pacific/Hawaii Metropolitan	1.003	1.008	Pacific/Hawaii Nonmetropolitan	1.000	1.000
Northwest/Alaska Metropolitan	1.000	1.000	Northwest/Alaska Nonmetropolitan	1.000	1.003
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.033	1.041
MSA Anchorage, AK	1.004	1.003	PMSA Ann Arbor, MI	1.017	1.023
MSA Atlanta, GA	1.026	1.028	PMSA Atlantic-Cape May, NJ	1.013	1.017
PMSA Baltimore, MD	1.014	1.016	PMSA Bergen-Passaic, NJ	1.022	1.029
*COUNTY Berkeley, WV	1.013	1.017	PMSA Boston, MA-NH	1.030	1.043
PMSA Boulder-Longmont, CO	1.042	1.046	PMSA Brazoria, TX	1.021	1.027
PMSA Bremerton, WA	1.036	1.044	PMSA Bridgeport, CT	1.020	1.031
PMSA Brockton, MA	1.029	1.044	*COUNTY Brown, OH	1.015	1.010
*Chicago, IL	1.024	1.035	*Cincinnati, OH-KY-IN	1.014	1.011
*COUNTY Clarke, VA	1.014	1.017	PMSA Cleveland-Lorain-Elyria, OH	1.033	1.041
*COUNTY Culpeper, VA	1.014	1.017	*Dallas, TX	1.033	1.040

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
PMSA Danbury, CT	1.021	1.030	*COUNTY De Kalb, IL	1.022	1.037
PMSA Denver, CO	1.042	1.046	PMSA Detroit, MI	1.015	1.024
PMSA Dutchess County, NY	1.022	1.029	PMSA Fitchburg-Leominster, MA	1.029	1.044
PMSA Flint, MI	1.014	1.024	PMSA Fort Lauderdale, FL	1.004	1.008
PMSA Fort Worth-Arlington, TX	1.032	1.040	*COUNTY Gallatin, KY	1.016	1.010
PMSA Galveston-Texas City, TX	1.021	1.027	PMSA Gary, IN	1.019	1.040
*COUNTY Grant, KY	1.016	1.010	PMSA Greeley, CO	1.042	1.046
*COUNTY Grundy, IL	1.020	1.039	PMSA Hagerstown, MD	1.014	1.017
PMSA Hamilton-Middletown, OH	1.014	1.011	*COUNTY Henderson, TX	1.027	1.041
PMSA Houston, TX	1.022	1.027	*COUNTY Jefferson, WV	1.013	1.017
PMSA Jersey City, NJ	1.022	1.028	PMSA Kankakee, IL	1.018	1.041
MSA Kansas City, MO-KS	1.030	1.038	*COUNTY Kendall, Il	1.022	1.036
PMSA Kenosha, WI	1.022	1.037	*COUNTY King George, VA	1.013	1.017
PMSA Lawrence, MA-NH	1.028	1.044	PMSA Los Angeles-Long Beach, CA	1.012	1.019
PMSA Lowell, MA-NH	1.029	1.043	PMSA Manchester, NH	1.029	1.044
PMSA Miami, FL	1.004	1.008	PMSA Middlesex-Somerset-Hunterdon, NJ	1.022	1.028
PMSA Milwaukee-Waukesha, WI	1.013	1.010	MSA Minneapolis-St. Paul, MN-WI	1.017	1.021
PMSA Monmouth-Ocean, NJ	1.021	1.030	PMSA Nashua, NH	1.029	1.044
PMSA Nassau-Suffolk, NY	1.021	1.030	PMSA New Bedford, MA	1.029	1.044
PMSA New Haven-Meriden, CT	1.021	1.030	PMSA New York, NY	1.022	1.027
*COUNTY Westchester, NY	1.023	1.027	PMSA Newark, NJ	1.022	1.029

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 031099

	HIGHEST COST UTILITY			HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED		INCLUDED	EXCLUDED
PMSA Newburgh, NY-PA	1.022	1.029	PMSA Oakland, CA	1.060	1.070
*COUNTY Ohio, IN	1.015	1.010	PMSA Olympia, WA	1.036	1.044
PMSA Orange County, CA	1.013	1.019	*COUNTY Pendleton, KY	1.015	1.010
PMSA Philadelphia, PA-NJ	1.013	1.017	PMSA Pittsburgh, PA	1.018	1.030
PMSA Portland-Vancouver, OR-WA	1.030	1.026	PMSA Portsmouth-Rochester, NH-ME	1.029	1.044
PMSA Racine, WI	1.014	1.010	PMSA Riverside-San Bernardino, CA	1.010	1.019
MSA St. Louis, MO-IL	1.008	1.013	PMSA Salem, OR	1.030	1.026
MSA San Diego, CA	1.033	1.040	PMSA San Francisco, CA	1.062	1.070
PMSA San Jose, CA	1.062	1.070	PMSA Santa Cruz-Watsonville, CA	1.060	1.070
PMSA Santa Rosa, CA	1.058	1.070	PMSA Seattle-Bellevue-Everett, WA	1.038	1.044
PMSA Stamford-Norwalk, CT	1.022	1.028	PMSA Tacoma, WA	1.037	1.044
MSA Tampa-St. Petersburg-Clearwater, FL	1.020	1.025	PMSA Trenton, NJ	1.022	1.029
PMSA Vallejo-Fairfield-Napa, CA	1.058	1.070	PMSA Ventura, CA	1.013	1.019
PMSA Vineland-Millville-Bridgeton, NJ	1.012	1.017	*COUNTY Warren, VA	1.014	1.017
*Washington, DC-MD-VA	1.014	1.016	PMSA Waterbury, CT	1.021	1.030
PMSA Wilmington-Newark, DE-MD	1.013	1.017	PMSA Worcester, MA-CT	1.029	1.044

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

MSA	Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr. Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

PMSA	Los Angeles-Long Beach, CA:	Los Angeles
PMSA	Oakland, CA:	Alameda, Contra Costa
PMSA	Orange County, CA:	Orange
PMSA	Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA	San Diego, CA:	San Diego
PMSA	San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA	San Jose, CA:	Santa Clara
PMSA	Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA	Santa Rosa, CA:	Sonoma
PMSA	Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA	Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES

PMSA Boulder-Longmont, CO:	Boulder
PMSA Denver, CO:	Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO:	Weld

METROPOLITAN COUNTIES

El Paso, Larimer, Pueblo

NONMETROPOLITAN COUNTIES

Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Bridgeport, CT

Fairfield County part:	Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
New Haven County part:	Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town

PMSA Danbury, CT

Fairfield County part:	Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part:	Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT

Middlesex County part:	Clinton town, Killingworth town
New Haven County part:	Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT

Fairfield County part:	Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT

Litchfield County part:	Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part:	Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town

PMSA Worcester, MA-CT

Windham County part:	Thompson town

METROPOLITAN COUNTIES

Hartford County part:	Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part:	Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part:	Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part:	Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part:	Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part:	Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES

PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Miami-Dade
MSA Tampa-St. Petersburg-Clearwater, FL:	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES

*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
STATE Hawaii: Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES

*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

IOWA (Cont.)

Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES

MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES

Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES

Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES

Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES

Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME

York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part: Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town

Cumberland County part: Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town

Penobscot County part: Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town

Waldo County part: Winterport town

York County part: Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES

Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington

Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town

Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town

Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town

Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town

York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city

PMSA Hagerstown, MD: Washington

*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's

PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES

Allegany

NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES

PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES

MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH
Rockingham County part: Seabrook town, South Hampton town

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county pt: Pelham town

PMSA Manchester, NH
Hillsborough county pt: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county pt: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town

Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW JERSEY (Cont.)

PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES

PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES
Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Newburgh, NY-PA:	Pike
PMSA Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part:	Jamestown town, Little Compton town, Tiverton town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

RHODE ISLANE (CONT.)

Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins,Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES
*Washington, DC-MD-VA: Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Bremerton, WA: Kitsap
PMSA Olympia, WA: Thurston
PMSA Portland-Vancouver, OR-WA: Clark
PMSA Seattle-Bellevue-Everett, WA: Island, King, Snohomish
PMSA Tacoma, WA: Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Berkeley, WV: Berkeley
*COUNTY Jefferson, WV: Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Kenosha, WI: Kenosha
PMSA Milwaukee-Waukesha, WI: Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI: Pierce, St. Croix
PMSA Racine, WI: Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

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federal register

Tuesday
December 28, 1999

Part V

Department of the Interior

Minerals Management Service

30 CFR Parts 218, 250, 252, etc.
Postlease Operations Safety; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218, 250, 252, 253, 256 and 282

RIN 1010–AC32

Postlease Operations Safety

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule: Updates and clarifies requirements related to postlease operations and stresses diligence; Allows MMS to grant a right-of-use and easement for an Outer Continental Shelf (OCS) leased or unleased block to a State lessee; Brings uniformity to the public release time for all proprietary geophysical data and information gathered under prelease; Clarifies the distinction between granting and directing a suspension, and the different consequences of each; Requires evacuation statistics for natural occurrences; Sets out criteria to disqualify an operator with repeated poor operating performance from continuing as designated operator; and Allows operators the opportunity to propose alternative regulatory approaches if they can demonstrate an equal or higher level of performance.

EFFECTIVE DATE: The rule is effective on January 27, 2000. The incorporation by reference of certain publications listed in these rules is approved by the Director of the **Federal Register** as of January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: On February 13, 1998, we published a Notice of Proposed Rulemaking (63 FR 7335), titled ''Postlease Operations Safety,'' revising the entire 30 CFR part 250, subpart A. The proposed rule was subsequently corrected in a notice on March 9, 1998 (63 FR 11385). We extended the 90-day comment period once (to provide a comment period of 120 days that closed on July 17, 1998). We received 11 responses during the comment period. On March 24, 1998 (during the comment period), we held a public meeting to consult on establishing criteria for the disqualification provision in the rule. This final rule amends the regulations at 30 CFR 218.154; 30 CFR part 250, subpart A; 30 CFR 256.1, 256.4, 256.35, and 256.73; and it corrects regulatory citations throughout the CFR to reflect the new subpart A sections.

Redesignation of 30 CFR Part 250

On May 29, 1998, we published a final rule that redesignated 30 CFR part 250 and assigned new section numbers to each section in part 250. The subpart A proposed rule was published before the redesignation. The redesignation rule allowed us to add more sections to the subpart A final rule and to break down lengthy sections into shorter and clearer sections. In our discussion of comments on the rule, we retained the section numbers from the proposed rule when we referred to the comments that we received. When we refer to the current regulations, we use the redesignated numbers as published in the final rule, published in the **Federal Register** on May 29, 1998 (also in the bound copy of the CFR, dated July 1, 1998).

MMS Position on Incorporated Documents

Incorporation by reference allows Federal agencies to comply with the requirements to publish regulations in the **Federal Register** by referring to materials already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators accountable for complying with the documents incorporated by reference in our regulations.

Differences Between Proposed and Final Rules Not Directly Related to Comments

In addition to changes we made to the final rule in response to comments, we reworded certain complex sections for further clarity. We also changed the wording/format of several section titles and headings. Although not directly related to public comments on the proposed rule, these changes were often triggered by the comments to other sections because so many of the sections are interrelated. Following are the major changes by section. We emphasize that the wording revisions do not change any requirements. In many instances, the changes improve MMS's internal work processes to better serve its external customers.

- In the table at § 250.102(b), we added a reference to Oil Spill Financial Responsibility coverage.
- We added § 250.103 on issuing Notices to Lessees and Operators (NTLs).
- In § 250.105, we modified the definition of exploration to clarify that exploration is not just any drilling per se, but are those drilling activities conducted in searching for potential commercial quantities of oil and gas.
- In § 250.105, we removed the definition of ''information'' as the definition was too narrow and restrictive. In addition to geological and geophysical (G&G) information, we deal with many different kinds of information including archaeological, biological, engineering, environmental, financial, and technical.
- In § 250.105, we expanded definitions of (1) ''lessee'' to include the MMS-approved assignee of the lease or the operating rights; (2) ''operator'' to include a designated agent of the lessee(s); and (3) ''you'' to include a designated agent of the lessee(s) and a pipeline right-of-way holder.
- In § 250.105, for consistency, we used 30 CFR 251 definitions for terms related to G&G.
- In § 250.105, in defining ''sensitive reservoirs,'' we deleted the word ''initially'' and added the words ''for submitting the first MER.''
- In § 250.108, we clarified the recordkeeping timeframe for crane operator qualifications to 4 years instead of 2 years. This clarification ensures that the crane operator has completed the appropriate training within the past 4 years. The 4-year timeframe is consistent with the currently incorporated Third Edition of API RP 2D, which says that operator qualifications are to be maintained at a minimum of 4 years through appropriate refresher training.
- In § 250.115, we separated the criteria for determining whether a well was an oil well or a gas well.
- In §§ 250.118 through 250.124, wherever applicable, we changed ''reinject'' and ''reinjection'' to ''inject'' and ''injection'' to denote that the gas is being injected for the first time.
- We revised § 250.120 to read: (a) ''If you produce gas from an OCS lease and inject it into a reservoir on the lease or unit according to paragraph § 250.118(b), you are not required to pay royalties until you remove or sell the gas from the reservoir. (b) If you store the gas according to paragraph § 250.119(c), you are required to pay royalty before injecting it into the storage reservoir.'' The reason is that injection of gas for a commercial storage project is not for the benefit of the lease; therefore, royalties are due before injection. This is consistent with the subsurface storage project approved by the Gulf of Mexico (GOM) Region for Chandeleur Block 29.
- In § 250.140(a) we replaced ''written approval'' with ''written decision'' because it is not a foregone

conclusion that the decision will be an approval.

• In the last sentence of § 250.162, we replaced the words ''provide you'' with the word ''recognize.'' The grant of the right-of-use or easement by MMS ''provides'' the ''rights.'' The lessee, or any subsequent lessee, simply recognizes those rights.

• We deleted proposed § 250.119(l)(5) which would have allowed us to grant a Suspension of Production (SOP) for exploratory reasons without a commitment to development and production. To give meaning to the primary term, we expect lessees to complete exploration and delineation to commit to production by the end of the lease term. We deleted proposed paragraph § 250.119(l)(6) which would have clarified when geophysical work could be used as a basis for an SOP approval. We deleted it because the regulatory authority provided in § 250.175(b)(1) allows us to grant an SOP when a lessee is committed to production and needs to complete geophysical work. In this section, we also removed the vague phrase ''good faith efforts.''

• In § 250.180, we inserted a new paragraph (a) to provide for reporting requirements for leases in their primary term and added clarity and specificity to paragraphs (e), (f), and (i).

• In § 250.190, we added a sentence at the end of paragraph (a)(2) to put the responsibility of the contents of a computer-generated form on the lessee/operator who generates the form.

• In the table at § 250.196, we added language to clarify that part 251 determines the public release of all proprietary geophysical data and information acquired under an exploration permit, even when the data and information are later submitted to MMS under part 250 stipulations. These permit data and information are protected under § 251.14 (currently 50 years for data and 25 years for information). The proprietary terms of these permit data and information would be unaffected by lease expiration or relinquishment.

The vast majority of seismic data and information submitted by lessees was originally acquired under exploration permits. The lessees acquired the data and information indirectly on a nonexclusive basis under a license agreement among the permittee, the geophysical contractor who acquired the data and information under part 251, and the lessee, who is a third party to the data and information.

However, part 250 determines the release of proprietary geophysical data and information that were acquired on a lease exclusively by or for a lessee, under terms of a lease, and submitted to MMS under part 250. These data and information are protected for a period of 10 years, or until the lease is relinquished or expires, whichever is sooner. This would include all seismic data and information acquired exclusively by or for the lessee and submitted for unitization purposes, or in support of exploration or development and production plans.

• In the table at § 250.199(e)(1), we added the following reason for collecting information, specifically G&G data and information under 30 CFR part 250, subpart A: to support the unproved and proved reserve estimation, resource assessment, and fair market value determinations.

Comments on the Rule

We received comments on specific issues from the Trustees for Alaska (Trustees), the International Association of Drilling Contractors (IADC), Newfield Exploration Company, the State of Florida, and the Small Business Administration (SBA). The American Petroleum Institute (API) and Offshore Operator's Committee (OOC), representing the industry, sent a consolidated comments table and clearly depicted their suggested language changes and rationale. The National Ocean Industries Association, the Independent Petroleum Association of America, and some of the large oil companies sent letters endorsing the American Petroleum Institute/Offshore Operator's Committee (API/OOC) consolidated comments. We posted all comments on the MMS internet homepage. We noted a universal comment on the need for a side-by-side comparison of existing regulations and plain language rewrites; we will adopt this suggestion for future rules rewritten in plain language. We have included in this notice our responses to comments other than those included on the table submitted by API/OOC followed by the API/OOC comments in tabular form together with our responses. Some of the comments in the consolidated API/OOC comments table were reiterated by other commenters. Since our response was the same, we have not provided in this notice a separate set of comments and responses for those comments. We organized our responses to comments other than those included in the API/OOC table under the following topics: I. comments and responses to miscellaneous issues; II. disqualifying an operator; III. granting a right-of-use and easement (with detailed responses to the extensive comments we received on the section); and IV. comments from SBA.

I. Comments and Responses to Miscellaneous Issues

• *Comment:* The reference to conservation, which was under the Director's authority at current § 250.104, was removed.

Response: The reference was never removed and appears at § 250.101(b): Under this authority, the MMS Director requires that all operations conform to *sound conservation practice* to preserve, protect, and develop mineral resources of the OCS to balance orderly energy resource development with protection of the human, marine, and coastal environments.

• *Comment:* Retain wording to the effect that the implementation of the regulation of operations on the OCS remains ''subject to the supervisory authority of the Secretary.''

Response: The Secretary's authority is stated clearly at § 250.101: ''The Secretary of the Interior (Secretary) authorized the Minerals Management Service (MMS) to regulate oil, gas, and sulphur exploration, development, and production operations on the outer Continental Shelf (OCS). *Under this authority*, the Director requires that all operations. * * *'' To clarify that ''this authority'' refers to the Secretary's authority, we are changing the words in italics to read ''Under the Secretary's authority.''

Response: We strengthened the language at § 250.106.

• *Comment:* Include definition for natural resources.

Response: We included the OCS Lands Act (OCSLA) definition for natural resources.

• *Comment:* Provide definitions for Eastern and Western GOM.

Response: We put back a definition for Eastern GOM, which was deleted in the proposed rule. We also included a definition for the Western GOM. In both definitions, we clarify that these areas are not to be confused with the planning areas that we use for lease sales.

• *Comment:* The requirements for cranes at proposed § 250.105 should not apply to mobile offshore drilling units (MODU) or other vessels.

Response: We clarified in § 250.108(a) that the requirements for cranes apply only to fixed platforms.

• *Comment:* Proposed change at § 250.106(g)(5) (italicized): You may not weld while you drill, complete, workover, or conduct wireline operations unless the fluids in the well, (*being drilled, completed, worked over, or having wireline operations conducted*), are noncombustible, and

you have precluded the entry of formation hydrocarbons into the wellbore *either by mechanical means or by a positive overbalance toward the formation.* The intent is to limit welding activities on or near wells that are being serviced or drilled, not limit welding because other wells in the wellbay are live.

Response: We have made the suggested changes at § 250.113(c)(6).

• *Comment:* ''You'' as used in proposed § 250.13 is too restrictive and should be expanded to include any person an MMS order or decision may adversely impact.

Response: We deleted the reference related to civil penalty appeals from subpart A. On August 8, 1997 (62 FR 42668), we published a final rule revision to subpart N that provides information related to civil penalty appeals. We further shortened § 250.104 on appeals because all appeals will be processed at the Department level and not at the agency level. We expanded the definition of ''you'' to include an operating rights holder, a designated operator of the lessee(s), a designated agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement.

• *Comment:* Should the U.S. Coast Guard (USCG), rather than MMS, be the recipient of such reports (Evacuation Statistics at proposed § 250.123(b)).

Response: The requirement at § 250.192 relates to our need to know, for national security reasons, the amount of production shut-in.

• *Comment:* Question duplicative accident reporting to both MMS and USCG.

Response: We deleted the proposed accident reporting table (at proposed § 250.120(a)). We retained the requirement in current regulations (at § 250.119(a)) under § 250.191 in this final rule. We will propose a separate rule to establish a joint MMS–USCG web-based system for reporting incidents to either agency. The rule will also give more guidance on thresholds for fires and factors that impair safety. (See comments and our responses in comment/response table.)

II. Disqualifying an Operator

Industry asked that we delete this new section. Environmental groups supported it. In response to a comment to provide adequate notice before disqualifying an operator, we inserted language in the rule at § 250.135. A commenter wanted to know what would happen if we revoked a company's designation as operator, and it was the sole lessee. If an operator is the sole lessee and designated operator of a lease, and has been disqualified from operating a facility on that lease, then the onus is on the lessee to find a new and acceptable designated operator and submit the change for our approval.

On March 24, 1998, we held a public meeting to consult on establishing criteria for the disqualification provision in the proposed rule. At the meeting we explained the disqualification process. The principal goal of the disqualification process is to improve performance and operational safety on the OCS by focusing on the designated operators. We analyze performance based on either a periodic assessment of specific measures or because of an event or performance concern.

At a minimum, we will analyze every operator's performance annually. Compliance history and accidents are the two primary areas of measurement we use to determine performance. In addition, we use other information gathered during annual performance reviews to determine an operator's overall performance. Using this information, we decide whether operators are acceptable or unacceptable performers.

We may also assess operator performance through a safety meeting. Several things may trigger a safety meeting—an accident, a bad inspection, failing a 30 CFR 250, subpart O training audit, or a civil penalty. During the meeting, we will discuss the triggering event with the operator and may also review their general performance if the situation warrants. We may issue a directed suspension if we perceive the triggering event as a continued threat to human safety or the environment. The actual event could lead us to determine that the operator is unacceptable.

In general, operators who exhibit unacceptable performance would undergo an incremental approach to improving their overall performance. At the annual performance review meeting, we would take the opportunity to highlight areas of concern regarding an operator's performance. The District Supervisor or Regional Supervisor for Field Operations may make specific recommendations to the operator for improving the safety of its operations.

It may be necessary for us to issue a directed suspension for a given facility because it poses an imminent threat to safety or the environment. A directed suspension or chronic poor performance could lead us to place an operator on probation. Four things then occur:

1. We notify the designated operator and all relevant lessees in writing that the operator is on probation for a specific period. The Regional Director will determine the length of probation.

2. We prohibit the designated operator from becoming the designated operator on leases during its probation.

3. We require the designated operator to submit a Performance Improvement Plan (PIP) to address the performance concerns and detail how the operator will bring its inventory of facilities into compliance.

4. We have the discretion to increase the number of performance review meetings as necessary.

Through additional performance analysis, we may determine that an operator's overall performance is improving, and the operator could be removed from probation. Conversely, an operator's performance could remain poor or worsen, and we may take more stringent actions such as:

• A facility-specific disqualification as designated operator for a period of time set by the Regional Director;

• A district-specific disqualification as designated operator for a period of time set by the Associate Director for Offshore Minerals Management (AD/OMM);

• A region-specific disqualification as designated operator for a period of time set by the AD/OMM; and

• An OCS-wide disqualification as designated operator for a period of time set by the Director of MMS.

We will not take these disqualification actions without the operator having the opportunity for a review by MMS officials. These actions require that an operator submit a PIP to us that details its efforts to improve the safety of its operations and bring its facilities back into regulatory compliance. The primary purpose of this rule is to ensure that operators who demonstrate a disregard for safety are unable to direct operations on leases on the OCS. We will pursue Department of the Interior debarment proceedings if we determine that it is appropriate to disqualify an operator from acquiring new leases/assignments on an OCS-wide basis.

These adverse actions may take place sequentially or in any order that the Director of MMS deems appropriate.

III. Granting a Right-of-Use and Easement

• *Comment:* Trustees commented that the proposed rule did not provide sufficient rationale for the need to expand our authority to issue rights-of-use and easement in the OCS to accommodate State lessees and questioned the statutory authority for this expansion of the regulation. Specifically, Trustees do not believe

that we have the legal authority to allow the placement of exploratory or production drill rigs or authorize other related uses in areas where we have not authorized OCS leasing, or where there are no active leases. (''As written, the proposed regulatory change might arguably allow exploration and related activities even in areas currently covered by OCS leasing moratoria, contrary to the expressed intent of Congress and recent Presidential actions.'')

Response: This rule simply clarifies our authority; the rule does not expand our authority. Between May 10, 1954, and December 13, 1979, § 250.18 specifically authorized the Regional Supervisor to grant a Federal or State lessee a ''right-of-use and easement'' on leased or unleased lands ''for the conduct of operations on any other lease, State or Federal.'' On October 26, 1979, the U.S. Geological Survey (USGS) published a final rule (44 FR 61889) revising 30 CFR part 250 to implement the statutory changes of the OCSLA Amendments of September 18, 1978, and for other purposes. Instead of continuing its authority to grant rights-of-use and easement to State lessees, it stated that ''State lessees wishing to obtain a right-of-way across the OCS must apply for a grant from the Bureau of Land Management (BLM).'' In October of 1979, USGS exercised the Secretary's authority to grant rights-of-use and the authority to grant easements while BLM exercised the Secretary's authority to grant pipeline rights-of-way. BLM had convinced the USGS that it should stop granting rights-of-use and easement for lessee-owned pipelines that extended from the OCS to shore. The change in the 1979 rulemaking recognized the agreement between the USGS and BLM that the USGS would no longer grant a right-of-use and easement for lessees to construct and operate a pipeline from the OCS to shore.

Neither the OCSLA, nor the 1978 amendments, makes a distinction that permits the Secretary to grant a State lessee a right-of-way but not a right-of-use and easement. Furthermore, there is little reason for a State lessee to apply for a right-of-way across the OCS. The right-of-way provisions of section 5 seem to require that the right-of-way be granted for the transportation of oil and gas produced from areas leased under the OCSLA. MMS has always had the authority to grant rights-of-use and easements, but it was inadvertently dropped from the regulations in 1979. We are simply reinserting it specifically in the regulations.

We may grant a right-of-use or easement to authorize the grantee to construct and maintain one or more platforms, fixed structures, or artificial islands on areas of the OCS; to drill a directional well or wells to be bottomed under the lease area; to produce and rework the well or wells; and to handle, treat, and store the production from the well or wells. Normally, we grant a right-of-use and easement to permit a lessee to conduct leasehold-type activities at a more advantageous location off the leasehold. There has to be an existing Federal or State lease that entitles the lessee to conduct oil and gas activities before a right-of-use and easement could even be considered. This regulation change does not allow us to authorize the initiation of exploration or production drilling or related activities into areas where the driller does not already have active lease and rights to drill. In addition, MMS would not issue authority to conduct operations that are not consistent with the policy of the Department and the President.

• *Comment:* Trustees also expressed concern that the proposed new language on rights-of-use and easement appears to arbitrarily broaden the rights of lessees without justifying the need for such a change. They felt that we had not identified where and for what purpose the regulations were being modified. Trustees specifically asked ''* * * does it cover gravel mining, placement of gravel mining, placement of gravel islands, disposal of dredge spoils, oil and natural gas pipeline construction and operation, processing platforms, seawater treatment plants, underground injection well sites, placement of exploratory drill ships or concrete island drilling structures?''

Response: The rule does not broaden the rights of lessees. Lessees must apply for a right-of-use and easement and show the need for conducting lease-related activities off the leasehold. We will continue to grant rights-of-use and easement to provide authority to conduct those leasehold-type activities that must be conducted off the leased areas; i.e., activities that would normally be approved under the authority of a lease (Federal OCS or State submerged lands) such as the ones listed in the comment.

• *Comment:* Trustees expressed concern that the new language in the regulations on right-of-use and easement may further reduce the environmental standards and opportunities for public involvement in controversial oil drilling projects. They gave the example of ARCO's Warthog well that was drilled from Federal OCS leases into State leases off the coast of the Arctic National Wildlife Refuge.

Response: The Warthog exploration program was conducted from an OCS lease and received a complete technical and environmental review through the exploration plan review process established under 30 CFR 250.204. The Warthog program did not involve a right-of-use and easement. The new rule will not circumvent the lease sale, Exploration Plan (EP) and Development and Production Plan (DPP) review process to allow production from facilities located on unleased OCS areas without the benefit of public, National Environmental Policy Act (NEPA), and Coastal Zone Management Act (CZMA) consistency review.

The rule prescribes that any drilling under a right-of-use and easement must comply with the requirements of our regulations which, in turn, implement NEPA, CZMA, and the OCSLA requirements for public review; thus EP/DPP, NEPA, and CZMA consistency review and technical standards continue to apply. Consideration for a right-of-use and easement on unleased OCS lands, to conduct activity into adjoining State lands, will still require that a State lease would be in place and the issuance of that State lease would have included a public review/or equivalent process. The State lessee must also obtain State authorization for activities under a right-of-use and easement into or under the State lease before any exploration or development activity could begin.

The regulation will call for MMS officials to vigilantly ensure that the operations on Federal and State leases are conducted in an equitable way. We may have to verify that officials of the regulatory agency for the adjacent coastal State will permit wells to be drilled from State lands to reservoirs underlying Federal OCS leases that are located near or adjacent to the Federal and State boundary.

The regulation requires payment of fees and includes special bonding provisions to ensure that wells drilled from Federal OCS lands to explore for or develop and produce oil and gas from State leases are properly plugged and abandoned, that platforms and other facilities are removed, and that the seafloor is cleared of obstructions to other uses of the ocean.

• *Comment:* Trustees also suggested that, ''The failure to better define 'right-of-use' in the regulations may be the nub of this problem.''

Response: The definition of ''right-of-use'' provided in the rule simply refers a reader to the regulations and is broadly defined since the regulations are clear on the use of this term. We have also provided a definition for the term ''easement.''

IV. Comments from SBA

SBA commented on the Regulatory Flexibility Act (RFA) section in the proposed rule preamble and pointed out that it was devoid of specific data on firm size and receipts. They also pointed out that although we discussed the economic effects of the rule (factual statement), a more thorough analysis was needed. In response to those comments, we have rewritten the RFA portion of the preamble.

Table of MMS Responses to American Petroleum Institute/Offshore Operator's Committee (API/OOC) Comments to 30 CFR Part 250, Subpart A

In the table, under the comments column, we show words in ''brackets'' that were in bold/strikeout in the original comments. We show in ''italics'' words that were underscored in bold type. We have provided the new citations in the MMS response column.

Section	API/OOC comments	API/OOC rationale	MMS response
218.154(a)(1)	(1) Directs the suspension of [both] operations [and] *or* production; or	The MMS proposal would require lessees to pay rental or minimum royalty if an SOO is granted on a lease when there is no production but there is a producible well. This is contrary to existing practice in which there is a distinction and obligation to pay based on ''who'' directed or requested the suspension. It is entirely possible to have an MMS-directed suspension on the lease with a producible well in its history but no production. In such case, lessees should be relieved of the responsibility to pay.	We simplified the wording to make clear that rentals and minimum royalties are due when a suspension is granted, or when directed due to the lessee's failure to comply with applicable law, regulation, order, or provision of a lease or permit.
218.154(a)(2)	(2) Directs the suspension of operations on a lease on which there is no producible well under the provisions of 30 CFR 250.19(j)(1), (j)(2), (*j*)(*3*), (j)(4) or (k)(2).	Safety and environmental requirements have been excluded on a lease with no producible well. It is entirely possible that such a requirement could be imposed by an agency with authority over such area near the end of a lease term. In such an instance a drilling rig might need to be re-outfitted. This could require a mobilization to a shore location (such as a shipyard) to add, for example, zero-discharge required equipment. Lessees should not be required to pay under these circumstances. This would be a departure from current practice since the suspension would be granted at the direction of the agency.	See comment to § 218.154(a)(1).
250.2	Best available and safest technology (BAST) means the best available and safest technologies which the [Secretary] *Regional Director or his designee* determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.	The Regional Director and the Regional Staff customarily analyze what equipment is best suited to protect safety, health, and the environment. The Regional Offices consult with Headquarters Staff when necessary in cases that require additional input.	We changed the authority from Secretary to the MMS Director (§ 250.105 and § 250.107(d)).
	Competitive reservoir means a reservoir in which there are one or more *producible or producing* well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.	Clarification	We made the suggested changes (§ 250.105)

Section	API/OOC comments	API/OOC rationale	MMS response
	Conservation means preservation, [economy], and avoidance of waste of *economically viable hydrocarbons.* [It is especially important in the petroleum industry, since oil and gas are irreplaceable.].	The term conservation as proposed is too vague. Generally speaking, it is the preservation and prevention of waste of economically viable hydrocarbons, which is intended.	We deleted the definition since it is not defined in the OCSLA or our regulations. The OCSLA gives us the authority to issue regulations and rules in the interest of conservation. The DOI needs the broad authority to allow for flexibility in regulating the Federal offshore program (§ 250.105).
	Development means those activities which take place following discovery of minerals in paying quantities, including *but not limited* to geophysical activity, drilling, platform construction, and operation of all *directly related* onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.	Clarification	We made the suggested changes (§ 250.105).
	Easement means an authorization *to use a portion of an OCS lease block which is non-possessory and non-exclusive.* [for a non-possessory, non-exclusive interest in a portion of an OCS tract, whether leased or unleased, which specifies the rights of the holder to use the area embraced in the easement in a manner consistent with] *The easement may be granted on leased or unleased blocks and the rights of the holder to use shall be specified and limited to the terms and conditions of* the granting authority.	The proposed definition is a new one. OCS tract is now an archaic term. The use of the phrase ''non-possessory and non-exclusive interest'' is misleading since the basic nature of easement is right-of-use as opposed to interest which appears to focus more on a possessory right.	We made the suggested change with respect to the term ''tract.'' We disagree with the suggested wording changes and have not made them (§ 250.105).
	Facility, as used in Sec. 250.11 concerning inspections, means any installation permanently or temporarily attached to the seabed *on the OCS* (that includes manmade islands, and bottom-sitting structures)[and any onshore installation] used for oil, gas, or sulphur drilling, production, or related activities. *It also includes facilities for product measurement and royalty verification (e.g., LACT units, gas meters) of OCS production located on installations not on the OCS.* Any group of *OCS* installations that is interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more satellite or secondary installations, is a single facility unless the Regional Supervisor determines that the complexity of the individual installations justifies their classification as separate facilities.	The word onshore must be a typo, otherwise, this new definition would improperly expand MMS's jurisdiction in the area of inspection to onshore facilities. This would allow the MMS to inspect gas plants that process OCS gas, coastal facilities that separate oil/gas/water, and other similar facilities for which the MMS does not have jurisdiction. Also the MMS does not have jurisdiction over the State Agencies that already perform these functions. The recommended change clarifies that facilities are on the OCS.	We deleted the reference to ''onshore'' and inserted (per comments from IADC) a reference to MODUs. We also revised the definition of facility as used in § 250.303 to clarify that ''during production, multiple installations or devices are a single facility if the installations or devices are at a single site'' (§ 250.105).
	Lessee means a person who has entered into *a lease,* [or who is the MMS-approved assignee of, a lease] with the United States to explore for, develop, and produce *the* leased minerals. The term lessee also includes an owner of operating rights for that lease *and the MMS-approved assignee of that lease.*	Clarification	We made the suggested changes and expanded the definition (§ 250.105).

Section	API/OOC comments	API/OOC rationale	MMS response
	[Of] *A*rchaeological interest means *that it directly leads to* [capable of] providing scientific or humanistic understanding of past human behavior.	The words ''capable of'' are unclear when used in the context of this definition and can be misinterpreted. The proposed words provide clarification.	We did not make the suggested changes except to delete the word ''of'' to be consistent with 30 CFR part 251. We defined the terms ''Archaeological resource, Of archaeological interest, Material remains, and Significant archaeological resource'' in a final rule published on 10/21/94 (59 FR 53091). The National Trust for Historic Preservation and the Office of the Department Consulting Archaeologist both commented that we define the term ''archaeological resource'' to be consistent with the definition provided in the implementing regulations for the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470, aa-mm, 43 CFR 7.3) (§ 250.105).
	Operating rights means any interest held in a lease with right to explore for, develop, and produce leased substances. Any assignment or transfer of operating rights may specify the depth [of the borehole down] to which the operating rights extend.	By including borehole in this definition, the proposed language is too specific. There are more cases when operating rights are assigned or transferred to a stratigraphic depth or other point, without a borehole descriptor.	We made the suggested changes (§ 250.105).
	Producing in paying quantities *means* [that] *a well is producing in paying quantities when it meets the criteria set out in Section 250.9* [able to produce oil, gas, or both in a cost-effective manner. This means that the production quantities must yield a greater return than the total costs, including well-completion costs, of producing the hydrocarbons at the wellhead].	Two separate sets of tests have been specified which will lead to ambiguity. The proposed definition suggests an economic test. Section 250.9 suggests specific tests which in most cases lead to economic production. However, there is no guarantee that the two definitions will always be equal and overlap. This may lead over time to great confusion in administering minimum royalty payment and in determining lease status for possible suspension.	We deleted this definition (§ 250.105).
	Production Areas are those areas where flammable petroleum gas and volatile liquids are produced, processed (e.g. compressed), stored, transferred (e.g. pumped), or otherwise handled prior to entering the transportation process.	Need to add clarification. Definition is from API RP 500.	We made the suggested changes (§ 250.105).
	Sensitive reservoir means a reservoir in which high reservoir production rates will decrease ultimate recovery. *For the submittal of the first MER* [Initially], all oil reservoirs with an associated gas cap are classified as sensitive.	The word ''initially'' in this definition is ambiguous. The classification of a sensitive reservoir can be defined in the first MER and if necessary, the MMS can determine after that point if the treatment as a sensitive reservoir should continue.	We made the suggested changes (§ 250.105).
	Suspension means a [granted or directed deferral of the requirement] *deferral granted at the request of the lessee or directed by the MMS of the requirement to* produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).	Clarification	We made the suggested changes with minor modifications (§ 250.105).
	Well bay is the perimeter of the outer most wellheads.	Clarification. Definition was from an MMS workshop in conjunction with the implementation of regulations in 1988.	Since a perimeter is just an outer border, we modified the suggested definition to read: ''Wellbay is the area on a platform within the perimeter of the outermost wellheads' (§ 250.105)

Section	API/OOC comments	API/OOC rationale	MMS response
250.3	*(b) Prevent loss of life* (*c* [b]) Prevent *unreasonable* damage to or waste of any natural resource, property, or the environment; and. (*d* [e]) Cooperate and consult with affected States, local governments, other interested parties, and relevant Federal agencies.	Suggested changes include the word *unreasonable* when considering damage to natural resources, property, or environment recognizing that oil and gas developments can not avoid some minimal amount of damages. *Prevent losses of life* does not have the unreasonableness test.	We inserted ''injury or'' before ''loss of life.'' We did not add the word ''unreasonable' (§ 250.106).
250.5	What standards must crane operations meet? To ensure the safety of the facility operations, you must meet the requirements of paragraph (a) of this section. [If your facility is located in the Pacific OCS Region, you must also meet the requirements of paragraph (b) of this section.]. [(b)This paragraph applies if your facility is located in the Pacific OCS Region. You may use . * * *].	There is no technical or safety justification for requiring more stringent requirements in the Pacific Region. Varying regulatory requirements for operating areas creates confusion with no measurable value.	We agree and deleted the paragraph on the Pacific Region requirements. We also completed the section so that it is a performance-based regulation (§ 250.108).
250.6(a)	You must submit a Welding, Burning, and Hot Tapping Safe Practices and Procedures Plan to the District Supervisor before you begin drilling or production activities on a lease. You may not begin welding activities until the District Supervisor has approved your plan. A copy of the plan and its approval letter must be *kept in the field* [available at the facility for the life of the facility (platform or drilling rig).].	It should not be necessary to keep a copy of the plan and approval letter at all facilities and drilling rigs for their life. A copy in the field, similar to the requirement for H2S Contingency Plans, should be sufficient.	We reworded the paragraph. It is important for the welder on each facility to be familiar with the plan. We changed the wording to be clear that the plan is needed at the site where welding occurs.
(b)(4)	[Drawings showing any d]*D*esignated safe-welding areas; *drawings showing designated safe-welding areas shall be maintained on the facility; and*	Drawings of safe-welding areas of all facilities covered by the plan should not be required in the plan. A drawing showing the designated safe-welding area developed by following the procedures identified in the plan should be maintained on the facility and should not be required with the plan. This is consistent with existing regulations.	We have reworded the paragraph and have addressed the commenter's concern.
(e)	Before you weld, you must move any equipment containing hydrocarbons or other flammable substances at least 35 feet horizontally from the *welding area* [work site. * * *].	Clarification	We made the suggested changes (§ 250.113(a)).
(g)(1)	You may not begin welding until the *welding supervisor or* designated person-in-charge has authorized in writing that it is safe to proceed with the welding activity. Before beginning welding, the designated person-in-charge and the welder(s) must inspect the work area and areas below the work area for potential fire and explosion hazards.	Including welding supervisor is consistent with 250.6(c).	We made the suggested changes (§ 250.113(c)).
(g)(4)	You may not weld [in, or] within 10 feet of[,] a well-bay [or production area] unless you have shut in all producing wells in that [area] *wellbay. You may not weld within 10 feet of a production area, unless you have shut-in* that production area.	Provides clarification of shut-in requirements.	We made the suggested changes (§ 250.113(c)).

Section	API/OOC comments	API/OOC rationale	MMS response
(g)(5)	You may not weld while you drill, complete, workover, or conduct wireline operations unless the fluids in the well are noncombustible and you have precluded the entry of formation hydrocarbons into the wellbore *by a positive overbalance toward the formation.* This does not apply to welding in an approved safe-welding area.	Clarification	We made the suggested changes and added the words ''either by mechanical means or'' (§ 250.113(c)(6)).
250.7	What requirements apply to electrical equipment? The requirements in this section apply to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities.	Recognizes the latest edition of API RP500 APIRP 505 as an alternative. Distribution systems are just one of many parts of the electrical system and do not need to be separately identified.	We are proposing a rule to incorporate by reference API RP 505, first edition. We made most of the suggested change to (b) and (d) (§ 250.114).
	(a) You must classify all areas in accordance with *either* API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities *Classified as Class I, Division 1 and Division 2, or API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2.*	.	
	(b)You must use trained and experienced personnel to maintain your electrical systems. They must have expertise in area classification, [distribution systems,] *and the* performance characteristics and operation of electrical equipment, *as well as* [and] associated hazards.	.	
	(c) You must install all electrical systems in accordance with API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms. You do not have to comply with Sections 7.4, Emergency Lighting, and 9.4, Aids to Navigation Equipment.	.	
	(d) *On each engine that has electric ignition system*, [Y]you must use a*n* [low tension] ignition system [on each engine that has electric ignition. You must.] *that is* design*ed* and maintain*ed* [the ignition system] to minimize the release of electrical energy.		
250.8	(b) *Whenever practicable, y*[Y]ou must use BAST on existing operations to avoid failure of equipment that would have a significant effect on safety, health, or the environment if the Director determines that:	Adds flexibility consistent with existing regulations.	We made the suggested changes and further clarified the language (§ 250.107(c)).

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250.9	To determine whether a well is capable of producing in paying quantities, submit a written request to the District Supervisor. You must then meet the criteria in paragraphs (a) and (b) of this section. Once a lease has a well that MMS determines is capable of producing in paying quantities, no further determination of well producibility will be made on the lease. A determination of well producibility invokes minimum royalty status on the lease as provided in 30 CFR 202.53. If your well is located in the Gulf of Mexico (GOM), you [must also] *may alternatively* meet the requirements of paragraph (c) of this section.	This is consistent with the present regulation found in Section 250.11(b). The intent is to provide an alternative mechanism, not to require additional requirements. If a well test is unavailable, the operator can submit data; it is not necessary to have both a well test and data. The present regulation states ''In the Gulf of Mexico OCS Region, the following shall also be considered collectively as reliable evidence that a well is capable of producing oil and gas in paying quantities.''	We made the suggested change of alternative determination of well producibility to apply to the GOM region. We rewrote this section for clarity with no new requirements. Another change is that the written request for determining well producibility must be submitted to the Regional Supervisor. The District Supervisor will continue to carry the function of witnessing tests (§ 250.116).
250.9(c)(1)	[The producible section must not include any interval which appears to be water saturated.]	The reason for the deletion is that all reservoir rocks are to some extent water saturated. This would disqualify all reservoir rocks.	We did not delete the sentence that ensures that several thin sands with a water contact are not grouped into a producible interval (§ 250.116(c)).
250.9(c)(1)(iii)	A minimum true resistivity ratio of the producible section to the nearest clean *or* water-bearing sand of at least 5:1.	This would clarify this definition which has been incorrect in the existing regulations.	We made the correction (§ 250.116(d)(1)).
250.9(c)(4)	A wireline formation test and/or mud-logging analysis which indicates that the section is capable of producing oil or gas *or evidence that an attempt was made to obtain such tests.*	This language which was left out in the rewrite is very critical and should be included. It is not unusual for wildcat/exploratory wells to have hole-problems when pay is exposed.	We did not make the suggested changes. We do not agree with the suggestion. We deleted the language in the proposed rule because the wording was very vague. We use several ways to qualify a well using standard practices. Keeping this wording would dilute the qualification process and make it a rubber stamp exercise (§ 250.116 (b)(3)).
250.11	(1) MMS conducts a scheduled onsite inspection of each offshore facility that is subject to environmental or safety regulations under the Act at least once a year. The inspection determines whether environmental protection and safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents has been installed and is operating properly *in accordance with the* requirements of this part.	Operating properly needs further definition to preclude differing interpretations. The current language in Subpart A clarifies that operating properly means in accordance with the requirements of this part. This current language should be maintained.	We made the suggested change. Also, in § 250.130(b), we removed the words ''at least once a year'' as this limits the scope of scheduling and added the words ''according to the requirements.'' In § 250.132(a) we removed the words ''at all reasonable times'' as the phrase is subjective and not necessary (§ 250.130).
250.12	Delete this section	The MMS proposed language is inconsistent with the OCS Lands Act and should be deleted. If MMS plans to include this section in the final rulemaking, then it should include the criteria for determining disqualification as well as the specific procedures which includes prior notice and opportunity for a hearing.	We disagree with the opinion that the language is inconsistent with the OCSLA. We explained the disqualification process in the preamble of this rule. In response to the comment, we added the sentence ''MMS will provide adequate notice and opportunity for a review by MMS officials before imposing a disqualification procedure'' (§§ 250.135 and 250.136).
250.14(c)	Approval for departures. If certain aspects of your *operations deviate from* [proposed procedure or equipment deviate from or are not covered by] MMS regulations, MMS may prescribe or approve exceptions from the operating requirements of this part.	Clarification	We made the suggested changes (§ 250.142).

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250.15(a)	You must provide the Regional Supervisor an executed Designation of Operator form unless you are the only lessee and are the only person conducting lease operations. When there is more than one lessee then the Regional Supervisor must receive [and approve] the Designation of Operator form from each lessee before the designated operator may commence operations on the leasehold.	The existing regulation in 250.8 allows the designated operator to begin operations on the lease after the Regional Supervisor ''receives'' the designation of operator. The revised version contained in 250.15(a) does not allow operations to begin until after the Regional Supervisor has ''received and approved'' the designation. Thus, the new version appears to have imposed an additional requirement on lessees. In addition, the MMS may typically be delayed in processing these approvals and would delay changes which should take place as soon as the operators are ready.	We did not make the suggested change. With the move towards performance based regulations, we are responsible for ensuring that designated operators are acceptable (§ 250.143).
250.15(a)(2)	When you are no longer the designated operator, you must immediately provide in writing the termination of your Designation of Operator to the Regional Supervisor. If you are also a designated royalty payor and will not continue to be in the future, you must also notify the Royalty Management Program of the termination of your Designation of Operator.	It is recommended that this requirement not be included in this section and be placed in the Royalty Management Program part of the MMS regulations, since the royalty payment staff of operators do not look at this 30 CFR 250 which is an operational regulation.	We made the suggested change (§ 250.146).
250.15(d)	Whenever the regulations in 30 CFR parts 250 to 282 require the lessee to meet a requirement or perform an action, *all persons who conduct lease activities on behalf of the lessee or operator must also comply with the regulations.* [the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for compliance with the regulation.].	As written, this section overstates the obligations of the co-lessee. Subpart (b) of the same section already makes the co-lessee responsible for fulfilling the obligation of the lessee in case of failure by the operator. The recommended language adds clarification that is consistent with the intent of the preamble.	We did not make the suggested changes as paragraphs (a), (b), and (c) are needed to clarify the various conditions when responsibility needs to be spelled out (§ 250.146).
250.16	Naming and Identifying [Platforms] *Facilities* and Wells (*does not include MODUS*). How do I name [platforms] *facilities* and wells?	The word ''platform'' implies a multiple legged fixed structure. With the use of caissons, spars, TLP's and FPS's a more appropriate term would be ''facilities.'' An alternative to this recommended change would be to include an applicable definition of platform. This section should not apply to MODUs that may be considered a facility when attached to the sea floor.	We made the suggested changes. For detailed descriptions on naming and numbering wells for reporting, operators should refer to the Notice to Lessees (NTL) No. 97–2N (issued on 8/1/97) ''Well Naming and Numbering Standards'' and to any later revisions of this NTL. We will issue another NTL to provide more instructions for the well naming and numbering to be used for reports and digital data (§§ 250.150 through 250.153).
250.16(a)	In the Gulf of Mexico Region: (1) Assign each [platform] *facility* a letter designation *except for those types of facilities identified in paragraph (a)(3)(i) of this section.* For example, A, B, CA, or CB.	The word ''platform'' was changed to ''facility'' for consistency (see above rational [sic]) for the recommended change). Furthermore, the statement ''except for those type facilities identified in paragraph (a)(3)(i) of this section'' was added in the recommended changes because § 250.16(a)(3)(I)[i] allows a numeric representation of single well caissons without production facilities.	We made the suggested changes (§ 250.150)

Section	API/OOC comments	API/OOC rationale	MMS response
250.16(a)(i)	After a [platform] *facility* is installed, rename each *pre-drilled* well that was *assigned only a number and was temporarily suspended at the mudline or at the surface.* [drilled through a template and was assigned a number.] Use a letter and number designation. *The letter used should be the same as that of the production facility and number used should correspond to the order which the well was completed, not necessarily the number assigned when it was drilled. For example, the first well completed for production on Facility A would be renamed Well A–1, the second would be Well A–2, and so on* [For example, rename Well No. 1: A–1, B–1, or C–1]; and.	The word ''platform'' was changed to ''facility'' for consistency (see above rational [sic]) for the recommended change). The word ''template'' would only account for those wells drilled through a drilling template, when in fact, most pre-drilled wells are suspended at mudline as casing stubs, or suspended as a caisson at the surface, while awaiting platform installation. The recommend change would account for all pre-drilled wells. The wells drilled, for completion as producers, are not necessarily the first wells drilled on a lease and would have an assigned number higher than one (1). Therefore, to account for this, we recommended that the well be assigned the sequential number given in the order it was completed for production, after the facility is installed, starting with the number one (1).	We made the suggested changes (§ 250.150(a)(1)).
250.16(a)(ii)	When you have more than one [platform in a field (excluding complexes), include the designations for the field and use a different letter designation for each platform.] *facility on a block, each facility installed, and not bridge-connected to another facility, should be named using a different letter in sequential order.* For example, [EC 221–A, EC 222–B, EC 223–C] *EC222A,* EC222B, EC222C.	See comments for 250.16(a)(iii)	We made the suggested changes (§ 250.150(a)(2)).
250.16(a)(iii)	ADD: *(iii) When you have more than one facility on multiple blocks in a local area that are being co-developed, each facility installed, and not connected with a walkway to another facility, should be named using a different letter in sequential order with the block number corresponding to the block on which the platform is located. For example, EC 221 A, EC 222 B and EC 223 C.*	The proposed draft only addresses more than one facility on multiple blocks or in a field. However, the recommended change accounts for multiple facilities on a single block. We recommend that a separate paragraph be added to address this scenario. The word ''field'' and the word ''complexes'' have very broad definitions. Therefore, we recommend the language change or an accurate definition of these terms as they apply to this section be added to this subpart.	We made the suggested changes (§ 250.150(a)(3)).
250.16(a)(3)(i)	For single well caissons that are not attached to a [platform] *facility* with a walkway, use the well designation. For example, Well No. 1;	Clarification	We made the suggested change (§ 250.150(c)(1)).
250.16(a)(3)(ii)	For single well caissons that are attached to a [platform] *facility* with a walkway, use the same designation as the platform. For example, rename Well No. 10 as A–10; and	Clarification	We made the suggested change (§ 250.150(c)(2)).
250.16(a)(3)(iii)	For single well caissons with production equipment use a letter designation *for the facility name and a letter plus number designation for the well.* For example, *the* Well No. 1 *caisson would be designated as Facility A, and the well would be Well [as] A–1.*	The intention of this paragraph is to use the letter designation for those caissons with substantial processing equipment. Furthermore, this requirement should not only outline the requirement for well naming but also the facility name. As proposed, the caisson would be named Well A–1, not Facility A.	We made the suggested changes (§ 250.150(c)(3)).

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250.16(d)	ADDITION: *All facilities installed and wells drilled prior to the effective date of this revision do not need to be renamed if they do not meet the naming criteria outlined in this section.*	Due to the enormous administrative and economic burden that would be placed on the industry and the MMS, existing structures should be allowed to retain their current names, if they do meet the requirements outlined herein.	We made the suggested changes and added ''unless required by the Regional Director'' to the end of the sentence. This gives the Regional Director the discretion to require renaming in case of a well numbering problem (§ 250.153).
250.17(a)	You must identify all *facilities* [platforms, structures], artificial islands, and mobile drilling units with a sign.	Clarification	We made the suggested change (§ 250.154).
250.17(a)(2)	(2) When helicopter landing facilities are present, you must display an additional identification sign that is visible from the air. The sign must use at least 12-inch letters and figures[, and must also display the weight capacity of the helipad]. If this sign is visible to both helicopter and boat traffic, then the sign in paragraph (a)(1) of this section is not required.	Weight capacity is not necessary for platform identification and would not be visible on the signs. Weight capacity is customarily noted on the top of the helipad.	We responded to this suggestion by adding the words ''unless noted on the top of the helipad'' after the words ''and must also display the weight capacity of the helipad (§ 250.154(a)(2))
250.17(a)(3)(ii)	In the GOM OCS Region, list the area designation or abbreviation and the block number of the [platform] *facility* location as depicted on OCS Official Protraction Diagrams or leasing maps;	This requirement applies to both mobile drilling units and all facilities.	We made the suggested change (§ 250.154(a)(3)(ii)).
250.17(b)(2)	For wells with multiple completions, *downhole splitter wells, and multilateral wells,* identify each completion *in addition to the well name and lease number* individually *on the well flowline* at the wellhead; and	We recommend the inclusion of downhole splitter wells and multilateral wells which are unique completions identified by the MMS in NTL 97–2N. Furthermore, we believe the lease and well name need to be identified in addition to the completion code on the flowline of each completion.	We made the suggested changes (§ 250.154(c)(3)(ii)).
250.17(b)(3)	For subsea [wellheads] *wells which flow individually into separate pipelines*, affix the required sign on the *pipeline or surface* flowline that [connects to the pipeline] *is dedicated to that* subsea well at a convenient location on the receiving platform. *For multiple subsea wells which flow into a common pipeline or pipelines, no sign is required.*	The recommended change lends clarity to situations where numerous subsea wells flow into a single pipeline. Furthermore, we believe it is not practical to separately identify each subsea well flowing into a single pipeline.	We made the suggested changes (§ 250.154(b)(3)).
250.17(c)	Each identifying sign [must be visible to approaching traffic and] maintained in a legible condition.	Redundant	We deleted this section.
250.18(a)(1)(ii)	Used for conducting exploration, development, and production activities or other operations [on your lease].	Limiting the right-of-way and easement to an owned lease is too limiting. In deep water subsea projects, development may dictate that several leases flow to a single platform. Under these circumstances, the right-of-way may continue and be needed even after the platform owner has ceased production.	We made the suggested change. It is noted that the comment uses the term ''right-of-way'' (as in pipeline right-of-way) whereas the section referred to (§ 250.18) related to granting a ''right-of-use and easement.''
250.19(i)	MMS must receive the request before the lease term ends *unless the lease is held by operations.*	The way that this subsection was reworded, this existing provision was omitted. It is possible to have a lease that is about to expire held by operations (such as drilling) which automatically extends the term of the lease until that period ends.	We did not make the suggested change since a suspension would not be needed if the lease were held by operations. We further clarified the sections (''Suspensions'' sections).

Section	API/OOC comments	API/OOC rationale	MMS response
250.19(j)(1)	*(6) When needed to comply with a Presidential decree or directive.*	In recent times, Presidential decrees have required cessation of activity on the West Coast, portions of Offshore Florida, and the East Coast. When the Executive Department requires this, it should be included as a cause for an MMS-directed suspension which extends the lease term.	We did not make the suggested change since a Presidential decree or directive would be implemented via a policy statement from the Director (''Suspensions'' sections).
250.19(j)(2)	When activities pose a threat of serious, irreparable, or immediate harm. This would include damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. [MMS may require you to do a site-specific study (see Sec. 250.19(o)(1));]	This requirement to perform an on-site specific study should be founded on something other than the discretionary authority of the MMS to grant a suspension. The cost of on-site surveys can be quite high, often benefit the entire area as opposed to an individual lease, and MMS has demonstrated no statutory authority to impose such excess costs as a condition of exercising leaseholds rights granted under the lease.	We did not make this change. This is not a new requirement, and we are retaining this authority so that we can require a study when it is necessary (''Suspensions'' sections).
250.19(l)	The Regional Supervisor may grant or direct an SOP and/or *an SOO* when: the suspension is in the national interest; [you have exercised diligence in pursuing production]; the lease was drilled and a well was determined to be producible in accordance with 30 CFR 250.9 or 250.253; and it is necessary because the suspension will meet one of the following criteria:	This change is necessary in order to correctly mirror current 30 CFR 250.10 which provides for not only suspension of production but a suspension of operations as well. The requirement to exercise diligence in production appears to already have been met by the requirement to have the producible well present. No criteria have been identified to determine diligence in production. Once the lease is in a producible status, by declaration of a producible well, this criteria seems to have already been met.	We did not add the words ''and/or an SOO'' because SOOs do not apply to this set of regulations. We deleted the phrase ''you have exercised diligence in pursuing production.'' Since diligence is not easily defined, we place more emphasis on the lessee's commitment to production and a sound activity schedule when analyzing SOP requests (''Suspensions'' sections).
250.19(l)(3)	It will allow you a reasonable amount of time to enter a sales *or transportation* contract for oil, gas, or sulphur. You must show that you are making a good faith effort to enter into the contract(s);	In today's gas environment, the transportation contract is as important as a sales contract; therefore the regulatory language should include both.	We did not make the change as transportation is covered (''Suspensions'' sections).
250.19(o)(1)	[Conduct a site-specific study(s);].	This requirement to perform an on-site specific study should be founded on something other than the discretionary authority of the MMS to grant a suspension. The cost of on-site surveys can be quite high, often benefit the entire area as opposed to an individual lease, and MMS has demonstrated no statutory authority to impose such excess costs as a condition of exercising leaseholds rights granted under the lease.	We did not make this change. This is not a new requirement, and we are retaining this authority so that we can require a study when it is necessary (''Suspensions'' sections).

Section	API/OOC comments	API/OOC rationale	MMS response
250.20	Except for requirements to report oil spills, delete all other reporting requirements and incorporate recommendations of the USCG NOSAC Incident Reporting Subcommittee established on April 22, 1998 consisting of MMS, USCG and industry personnel.	Definitions of accidents are inconsistent with those used in SEMP (NTL 98 -6N) and those required by the USCG for similar incidents. These proposed regulations in many cases duplicate reporting requirements of the United States Coast Guard. At a meeting of NOSAC (National Offshore Advisory Committee) in Washington on April 22, 1998, a Subcommittee was established to review and recommend changes to improve the process of defining and reporting incidents to the MMS and the USCG. This effort was endorsed by Carolita Kallaur, Associate Director for Offshore Minerals Management. Recommendations will be completed by October 1998. Significant administrative burden would be added to all operators if this proposed regulation was implemented. This would be the most expedient method to resolve this issue and avoid OMB and other intervention in adding this administrative burden to operators and contractors.	We deleted the accident reporting table at proposed § 250.120(a). We will propose a separate rule to establish a joint MMS-USCG web-based reporting system for incidents that have to be reported to either agency. We retained the current requirement at § 250.119(a) (§ 250.191).
250.20(a)	Industry has expressed concerns to the MMS that ''fires'' needs to be better defined since industry has confusion on what needs to be reported. We recommend that the MMS include a description or definition for what a fire is and what types of fires they expect to receive in the reports.	To avoid uncertainty, the rule should include the definition, especially when the MMS is planning to use fires as one of the criteria included with the disqualification procedures found in this proposed rule in Section 250.12. The preamble states that more guidance will be given in an NTL. We prefer that the language be included in a rule.	We will propose a separate rule on incident reporting (see response to previous comment). The rule will give more guidance on thresholds for fires and factors that impair safety.
	The MMS should include language that allows the Operator to submit this information marked ''Confidential'' and the MMS to maintain it in such a way without divulging the details that may be involved in legal action.	The MMS should respect the confidentiality and sensitivity of information marked ''Confidential'' as they do with other information they receive from operators.	We will propose a separate rule on incident reporting (see response to previous comment) and consider the comment in that rulemaking.
250.20(a)(1)	We recommend that this subsection qualify that the operation must be related to the exercise of the easement, right-of-way, or other permit.	It would be impossible for a pipeline right-of-way owner to be aware of any accidents which might happen to occur within the pipeline right-of-way corridor which did not directly influence or impact the exercise of the right-of-way itself.	We made the suggested changes (§ 250.191(b)).
250.20(a)(2)	We recommend that the final rule qualify the investigative authority so that it is not exercised by both the Department of Transportation's United States Coast Guard and the Department of [the] Interior's MMS.	The cited portions of the OCS Lands Act specify that either the Secretary or the U.S. Coast Guard may institute investigations but not both. This limitation must be contained in the regulations in order for them to be lawful.	We made the suggested changes (§ 250.191(c)).

Section	API/OOC comments	API/OOC rationale	MMS response
250.20(a)(2)	We recommend that the striking of the provision which only allows panel members and panel experts to address questions to the person giving testimony.	This provision violates the provisions of Section 22(f) of the OCS Lands Act which requires that the production of documents and the handling of testimony and witnesses be analogous to the Federal Rules of Civil Procedure. The Federal Rules Of Civil Procedure give the party at risk for citation the opportunity to participate in questioning of witnesses in the course of any hearing.	We did not make the suggested changes. However, since commenters have objection to the proposed wording, we used the wording exactly as it is in our current regulations (§ 250.191(c)).
250.20(b)	The MMS should clarify that they want to get personnel evacuation numbers only, to avoid uncertainty. Also, the MMS should add the words ''as conditions allow'' immediately after (b)(2) after ''11 AM'' in this sentence.	The MMS should clarify what they need since the word ''statistics'' is not defined. In addition, the MMS needs to understand the critical nature and plans that require full operator attention for safe evacuation of personnel, ensuring the operations are safely and environmentally shut-in, housing the evacuated personnel, and ensuring the safety of office management/staff. This process must have higher priority than reporting ''statistics'' by 11 AM during the period of shut-in and evacuation. MMS offices are also evacuated when natural events such as hurricanes approach populated areas, so the ''statistics'' would probably not be accessible.	We listed evacuation statistics needs as the following: facilities and rigs evacuated and the amount of production shut-in for oil and gas. We inserted ''as conditions allow'' (§ 250.192).
250.21	Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, any provision of a lease, license, or permit issued under the Act, or any provision of any regulation or order issued under the Act. When MMS receives a report of an apparent violation, or when an MMS employee detects an apparent violation, *after making a determination of the validity,* MMS will investigate in accordance with its procedures.	This will prevent the MMS from being forced to investigate frivolous or baseless allegations which are apparent on their face.	We have not made the changes because MMS procedures will determine the validity (§ 250.193).

Section	API/OOC comments	API/OOC rationale	MMS response
250.23(a)	Your lease expires at the end of its primary term unless you are producing in paying quantities or conducting drilling or well-reworking operations on your lease (see 30 CFR part 256). The objective of the drilling or well-reworking operations must be to establish continuous production on the lease. For purposes of this section, the term operations means [continuous] production, drilling, or well-reworking.	Ordinary oil and gas principles extend a lease provided a continuous exploratory drilling program is in operation. The present wording does not appear to include this fact, but instead focuses solely on production or the re-institution of production itself. A lessee could maintain a lease by a continual and diligent exploratory program through continuous drilling activity. This concept is missing in the proposed rule. In addition, the last sentence as is will cause confusion and it contradicts the remainder of Section 250.23. It is possible during drilling or well-reworking to start and stop operations within the 180-day clock, such as to get different equipment, personnel, other operations on the platform, etc. As long as the word ''continuous'' is there, it can be interpreted as being ongoing and not allowing for start and stops. This is unrealistic with regard to how offshore operations take place.	We deleted the word continuous from this section (§ 250.180).
250.25	When will MMS reimburse me for reproduction, *processing, and other* costs?	Since the reimbursement provision is for other areas than reproduction, it will be easier for the operator to find this section.	We made § 250.195 parallel to 30 CFR part 251. This section only refers to reimbursements for G&G data and information.
250.27(b) Table	When your lease terminates or [10] *15* years after the date you submit the data whichever is earlier. [10] *15* years after the date you submit it.	Ten years is not enough in the case of deepwater leases (deep water leases have a 10 year primary term) where an exploratory well is drilled, an SOP obtained pending development. Same as above. In addition, there could exist open acreage next to a lease that has not been fully developed since operations in deep water tend to be more complex.	We have not made the suggested change. To change the release time for these data would make releasing data and information more complicated and make it extremely difficult to track properly. Following our current regulations, we have already released deepwater data. The suggested change would not enhance our ability to get fair market value for leases (§ 250.196).
	MMS will disclose information not collected on MMS forms in accordance with the following table: if—The director determines that data and information are needed for specific scientific or research purposes for the Government MMS will release—Geophysical data, geological data, interpreted G&G information, processed and reprocessed geophysical information, analyzed geological information. At this time—Anytime Additional provisions—MMS will release data and information *with the review and consent of the lessee* only if release would further the national interest without unduly damaging the competitive position of the lessee.	Operator should have the opportunity to review the current situation and decide whether or not release of the data would jeopardize its competitive position.	We did not make this change. This change would mean that we would have to go to the lessee before we transfer proprietary data and information (paleo reports, etc.) to anyone doing work on our behalf. This is not a good idea. It limits our ability and rights to do research and detailed studies (§ 250.196).

Section	API/OOC comments	API/OOC rationale	MMS response
	[2] *10* years after you submit it or 60 days after a lease sale if any portion of an offered block is within 50 miles of a well, whichever is later.	Two years is not enough in the case of deepwater leases (deep water leases have a 10 year primary term) where an exploratory well is drilled, an SOP obtained pending development. Same as above. In addition, there could exist open acreage next to a lease that has not been fully developed since operations in deep water tend to be more complex.	We have not made the suggested change. To change the release time for these data would make releasing data/information more complicated and make it extremely difficult to track properly. Following our current regulations, we have already released deepwater data. Additionally, the suggested change would not enhance our ability to get fair market value for leases (§ 250.196).
256.73(a)	(a) [Normally,] a *A* suspension extends the term of a lease. The extension is equal to the length of time the suspension is in effect. The suspension will not extend the lease term when the Regional Supervisor directs a suspension because of:	The existing Section 256.73(a) clearly states the primary term of the lease will be extended if the lessee is granted an SOO or SOP pursuant to 30 CFR 250.10(a), (b)(2) through (b)(7), or (c). This very clear and concise provision has been rewritten to state that a suspension ''normally'' extends the term of a lease. Since the term ''normally'' is not defined, the net result of this change is a provision that is less specific.	We have deleted the word ''normally'' and rewritten the entire section for clarity.

API/OOC Comments and MMS Responses on Documents Incorporated By Reference

In addition to the comments in the preceding table, API/OOC provided numerous suggestions to update the documents incorporated by reference in proposed § 250.28. Some have already been updated; this final rule will make the recommended changes to most of the others; and we will consider the remaining few for future rulemaking.

The following is a list of the documents incorporated by reference that we updated in the table in § 250.198(e):

API MPMS, Chapter 2, Section 2B
API MPMS, Chapter 3, Section 1B
API MPMS, Chapter 4, Section 7
API MPMS, Chapter 6
API MPMS, Chapter 6, Section 6
API MPMS, Chapter 7, Section 3
API MPMS, Chapter 10, Section 4; also available as ANSI/ASTM D 96
API MPMS, Chapter 11
API MPMS, Chapter 11.1; also available as ANSI/ASTM D1250
API MPMS, Chapter 14, Section 3, Part 1; also available as ANSI/API 2530, Part 1
API MPMS, Chapter 14, Section 3, Part 2; also available as ANSI/API 2530, Part 2
API MPMS, Chapter 14, Section 6
API RP 2A
API RP 2A, Supplement 1
API Spec Q1
API Standard 2545 incorporated as MPMS, Chapters 3.1A and 3.1B
API Standard 2551
API Standard 2552
API Standard 2555

The following is a list of documents incorporated by reference that we have already addressed through other rulemakings published on July 9, 1998 (63 FR 37066) and May 12, 1998 (63 FR 26365):

API MPMS, Chapter 14, Section 8
API MPMS, Chapter 20
API MPMS, Chapter 21
API RP 14C
API Spec 14D

We are considering, or will consider, the following for future changes in documents incorporated by reference:

API MPMS, Chapter 14, Section 1
API RP 500 (proposed rule published 3/19/99, 64 FR 13535)
API RP 505 (proposed rule published 3/19/99, 64 FR 13535)
API 510 (currently under review)
API Specification 6D, Supplement 2
API Specification 14A, Supplement 1

Procedural Matters

Takings Implication Assessment Executive Order (E.O.) 12630

MMS certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Federalism (E.O. 13132)

According to E.O. 13132, this rule does not have Federalism implications. This rule:

(a) Does not substantially and directly affect the relationship between the Federal and State governments;

(b) Does not impose costs on States or localities;

(c) Does not preempt State law.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under E.O. 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The new or expanded requirements in the rule are designed to safeguard lives, property, and the environment. They do not impose extensive burdens. The economic effects of the rule will be minimal.

The revised regulations will allow lessees of a State lease located adjacent to the OCS to apply for a right-of-use and easement. Although MMS has always had the authority to grant rights-of-use and easements, it was inadvertently dropped from the regulations in 1979, and we are simply reinserting it specifically in the regulations. We anticipate very few situations occurring when a State lessee would need to take advantage of this provision in the regulations. Therefore, we estimate possibly one application from a State lessee annually. If a State lessee applies for a right-of-use and easement, they will be required to pay a $2,350 application fee and $500 in annual rental. The fee and rental are the same as those required for pipeline right-of-way grants in our current

regulations. We used this as the cost basis because of the similarity in complexity between approving current pipeline right-of-way grants and the new right-of-use and easement applications allowed under this regulation.

The total reporting and recordkeeping burdens on all entities affected are minimal (less than $400,000 per year).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule had a new accident reporting table that raised a question of duplicative accident reporting to both MMS and USCG. We have deleted the table from the final rule. We will propose a separate rule to establish a joint MMS–USCG web-based system for reporting accidents/incidents to either agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will only have a minimal effect with respect to user fees. State lessees will have to pay a small fee and hold a bond for the benefit of receiving the right-of-use and easement in the OCS.

(4) This rule does not raise novel legal or policy issues. The new or expanded requirements in the rule are based on the longstanding legal authority of the OCSLA and other laws. As previously stated, the rule emphasizes MMS's commitment towards ensuring safe operations.

Civil Justice Reform (E.O. 12988)

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

National Environmental Policy Act

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

Paperwork Reduction Act of 1995 (PRA)

We examined the proposed and final rule under the PRA. We determined that the approved information collection requirements remain unchanged for 30 CFR part 218; 30 CFR part 250, subparts E and F; and 30 CFR part 256.

With respect to 30 CFR part 250, subpart D, the rule removes sections that contain approved collections of information and relocates them to 30 CFR part 250, subpart A. We will submit an inventory correction to OMB to update the approved 30 CFR part 250, subpart D information collection requirements (OMB control number 1010–0053).

Because of the changes in 30 CFR part 250, subpart A, as part of the proposed rulemaking process, we submitted the information collection requirements (including form MMS–132) to OMB for approval. The final rule made very few changes in the collection of information, but we resubmitted the revisions to OMB for approval under section 3507(d) of the PRA. OMB has approved the collection of information under OMB control number 1010–0114. The title of this collection of information is ''30 CFR 250, Subpart A—General.'' The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The minor differences in the information collection requirements in the proposed rulemaking from those approved for the final rule are:

- Eliminated the requirement to submit information on the use of BAST-requests would be considered under new or alternative procedures.
- Clarified the recordkeeping retention requirements for crane operator qualifications to be consistent with the standards in the document incorporated by reference for this activity.
- Eliminated the ''proposed'' accident reporting requirements and retained the ''current'' subpart A accident reporting and estimated burden.

In responding to comments, we have concluded that the procedures leading to disqualification of an operator could result in respondents submitting a performance improvement plan to avoid disqualification. Although this is part of our internal enforcement process and not specifically identified in the regulations, the ICR approved for the final rule includes the burden for this contingency.

We use the collection of information required by this rule to ensure that operations on the OCS are carried out in a manner that is safe, pollution-free, does not interfere with the rights of other users on the OCS, and balances the protection and development of OCS resources. The frequency of submission varies according to requirement but is generally ''on occasion.'' Responses are mandatory.

We estimate there are approximately 131 respondents to this collection of information—130 Federal OCS lessees and operators and one State lessee.

Reporting and Recordkeeping ''Hour'' Burden: The approved annual burden of this collection of information is 7,231 reporting hours and 3,485 recordkeeping hours, for a total of 10,716 burden hours. Based on $35 per hour, we estimate the total hour burden cost to respondents to be $375,060.

Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The approved paperwork non-hour cost burden remained unchanged in the final rule. We still anticipate that only one State lessee per year might apply for a right-of-use and easement. The respondent is required to pay a cost recovery application fee of $2,350.

Regulatory Flexibility Act

The changes proposed in 30 CFR part 250, subpart A, will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

The Small Business Administration's Office of Advocacy in commenting on this rule referred to Standard Industrial Classification (SIC) 1381, Drilling Oil and Gas Wells. Under this SIC code, MMS estimates that there is a total of 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. According to SBA estimates, 39 companies qualify as large firms, leaving 91 companies qualified as small firms with fewer than 500 employees.

The primary economic effect of the revised subpart A on small businesses is the cost associated with information collection activities. The rule is a plain language rewrite of 30 CFR 250, subpart A, and contains virtually all of the same reporting and recordkeeping requirements and attendant costs as the existing regulations. The changes in reporting requirements will not significantly increase the information collection hour burden on respondents—large or small. Based on the average number of lessees being 130, we estimate a combined annual burden of 10,716 hours for all entities. Using a standard average hourly cost of $35.00 to determine the paperwork burden, the total hourly cost burden is $375,060. This reflects an increase in the paperwork burden from the current regulation of 2,288 hours, for a cost burden increase of $80,080 or $616 per

entity (large or small) from the current regulation.

There is also a reporting cost burden associated with one of the new benefits to State lessees that requires a fee of $2,350, but only if a State lessee/operator chooses to apply for a right-of-use and easement. If a State lessee applies for a right-of-use and easement, they will be required to pay a $2,350 application fee and $500 in annual rental. We do not anticipate more than one application for a right-of-use and easement from a State lessee annually.

Based on these calculations, this rule has no significant economic impact on the small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The primary purpose of this rule is to restructure it for better reorganization and to simplify regulatory language. The restructuring and plain language revisions will not result in any economic effects to small or large entities. The only costs will be for the purchase of the new documents incorporated by reference and minor revisions to some operating procedures. The minor revisions to operating procedures may result in some minor costs or may actually result in minor costs savings.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The new costs associated with this rule are minimal. State lessees will have to pay a fee and rental to obtain the benefits of a right-of-use and easement in the Federal OCS.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The regulation will not have any adverse effects on competition or other business/commercial aspects of the regulated industry. It contains a few new requirements that are not burdensome and that ensure that operations in the OCS remain safe and environmentally sound.

Unfunded Mandates Reform Act of 1995

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

List of Subjects

30 CFR Part 218

Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

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

30 CFR Part 252

Continental shelf, Freedom of information, Intergovernmental relations.

30 CFR Part 253

Continental shelf, Environmental protection, Insurance, Oil and gas exploration, Oil pollution, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 282

Continental shelf, Prospecting, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: November 5, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR parts 218, 250, 252, 253, 256 and 282 as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 *et seq.*; 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C.A. 3335; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*; 1801 *et seq.*

2. In § 218.154 paragraphs (a) and (b) are revised to read as follows:

§ 218.154 Effect of suspensions on royalty and rental.

(a) MMS will not relieve the lessee of the obligation to pay rental or minimum royalty for or during the suspension if the Regional Supervisor:

(1) Grants a suspension of operations or production, or both, at the request of the lessee; or

(2) Directs a suspension of operations or production, or both, under 30 CFR 250.173(a).

(b) MMS will not require a lessee to pay rental or minimum royalty for or during the suspension if the Regional Supervisor directs a suspension of operations or production, or both, except as provided in (a)(2) of this section.

* * * * *

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

3. The authority citation for part 250 continues to read as follows:

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

4. Subpart A is revised to read as follows:

Subpart A—General

Authority and Definition of Terms

Sec.
250.101 Authority and applicability.
250.102 What does this part do?
250.103 Where can I find more information about the requirements in this part?
250.104 How may I appeal a decision made under MMS regulations?
250.105 Definitions.

Performance Standards

250.106 What standards will the Director use to regulate lease operations?
250.107 What must I do to protect health, safety, property, and the environment?
250.108 What requirements must I follow for cranes and other material-handling equipment?
250.109 What documents must I prepare and maintain related to welding?
250.110 What must I include in my welding plan?
250.111 Who oversees operations under my welding plan?
250.112 What standards must my welding equipment meet?
250.113 What procedures must I follow when welding?
250.114 How must I install and operate electrical equipment?
250.115 How do I determine well producibility?
250.116 How do I determine producibility if my well is in the Gulf of Mexico?
250.117 How does a determination of well producibility affect royalty status?
250.118 Will MMS approve gas injection?
250.119 Will MMS approve subsurface gas storage?
250.120 How does injecting, storing, or treating gas affect my royalty payments?
250.121 What happens when the reservoir contains both original gas in place and injected gas?
250.122 What effect does subsurface storage have on the lease term?
250.123 Will MMS allow gas storage on unleased lands?
250.124 Will MMS approve gas injection into the cap rock containing a sulphur deposit?

Inspection of Operations

250.130 Why does MMS conduct inspections?
250.131 Will MMS notify me before conducting an inspection?
250.132 What must I do when MMS conducts an inspection?
250.133 Will MMS reimburse me for my expenses related to inspections?

Disqualification

250.135 What will MMS do if my operating performance is unacceptable?
250.136 How will MMS determine if my operating performance is unacceptable?

Special Types of Approvals

250.140 When will I receive an oral approval?
250.141 May I ever use alternate procedures or equipment?
250.142 How do I receive approval to use alternate procedures or equipment for departures?
250.143 How do I designate an operator?
250.144 How do I designate a new operator when a designation of operator terminates?
250.145 How do I designate an agent or a local agent?
250.146 Who is responsible for fulfilling leasehold obligations?

Naming and Identifying Facilities and Wells (Does Not Include MODUs)

250.150 How do I name facilities and wells in the Gulf of Mexico Region?
250.151 How do I name facilities in the Pacific Region?
250.152 How do I name facilities in the Alaska Region?
250.153 Do I have to rename an existing facility or well?
250.154 What identification signs must I display?

Right-of-Use and Easement

250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?
250.161 What else must I submit with my application?
250.162 May I continue my right-of-use and easement after the termination of any lease on which it is situated?
250.163 If I have a State lease, will MMS grant me a right-of-use and easement?
250.164 If I have a State lease, what conditions apply for a right-of-use and easement?
250.165 If I have a State lease, what fees do I have to pay for a right-of-use and easement?
250.166 If I have a State lease, what surety bond must I have for a right-of-use and easement?

Suspensions

250.168 May operations or production be suspended?
250.169 What effect does suspension have on my lease?
250.170 How long does a suspension last?
250.171 How do I request a suspension?
250.172 When may the Regional Supervisor grant or direct an SOO or SOP?
250.173 When may the Regional Supervisor direct an SOO or SOP?
250.174 When may the Regional Supervisor grant or direct an SOP?
250.175 When may the Regional Supervisor grant an SOO?
250.176 Does a suspension affect my royalty payment?
250.177 What additional requirements may the Regional Supervisor order for a suspension?

Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations

250.180 What am I required to do to keep my lease term in effect?
250.181 When may the Secretary cancel my lease and when am I compensated for cancellation?
250.182 When may the Secretary cancel a lease at the exploration stage?
250.183 When may MMS or the Secretary extend or cancel a lease at the development and production stage?
250.184 What is the amount of compensation for lease cancellation?
250.185 When is there no compensation for a lease cancellation?

Information and Reporting Requirements

250.190 What reporting information and report forms must I submit?
250.191 What accident reports must I submit?
250.192 What evacuation statistics must I submit?
250.193 Reports and investigations of apparent violations.
250.194 What archaeological reports and surveys must I submit?
250.195 Reimbursements for reproduction and processing costs.
250.196 Data and information to be made available to the public.

References

250.198 Documents incorporated by reference.
250.199 Paperwork Reduction Act statements—information collection.

Subpart A—General

Authority and Definition of Terms

§ 250.101 Authority and applicability.

The Secretary of the Interior (Secretary) authorized the Minerals Management Service (MMS) to regulate oil, gas, and sulphur exploration, development, and production operations on the outer Continental Shelf (OCS). Under the Secretary's authority, the Director requires that all operations:

(a) Be conducted according to the OCS Lands Act (OCSLA), the regulations in this part, MMS orders, the lease or right-of-way, and other applicable laws, regulations, and amendments; and

(b) Conform to sound conservation practice to preserve, protect, and develop mineral resources of the OCS to:

(1) Make resources available to meet the Nation's energy needs;

(2) Balance orderly energy resource development with protection of the human, marine, and coastal environments;

(3) Ensure the public receives a fair and equitable return on the resources of the OCS;

(4) Preserve and maintain free enterprise competition; and

(5) Minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas and the recovery of other resources.

§ 250.102 What does this part do?

(a) 30 CFR part 250 contains the regulations of the MMS Offshore program that govern oil, gas, and sulphur exploration, development, and production operations on the OCS. When you conduct operations on the OCS, you must submit requests, applications, and notices, or provide supplemental information for MMS approval.

(b) The following table of general references shows where to look for information about these processes.

TABLE—WHERE TO FIND INFORMATION FOR CONDUCTING OPERATIONS

For information about	Refer to
(1) Abandoning wells	§ 250.701.
(2) Applications for Permit to Drill	§ 250.414.
(3) Development and Production Plans (DPP)	§ 250.204.
(4) Downhole commingling	§ 250.1106.
(5) Exploration Plans (EP)	§ 250.203.
(6) Flaring	§ 250.1105.
(7) Gas measurement	§ 250.1203.
(8) Off-lease geological and geophysical permits	30 CFR 251.
(9) Oil spill financial responsibility coverage	30 CFR 253.
(10) Oil and gas production safety systems	§ 250.802.
(11) Oil spill response plans	30 CFR 254.
(12) Oil and gas well-completion operations	§ 250.513.
(13) Oil and gas well-workover operations	§ 250.613.
(14) Platforms and structures	§ 250.901.
(15) Pipelines	§ 250.1009.
(16) Pipeline right-of-way	§ 250.1010.
(17) Sulphur operations	§ 250.1604.
(18) Training	§ 250.1500.
(19) Unitization	§ 250.1300.

§ 250.103 Where can I find more information about the requirements in this part?

MMS may issue Notices to Lessees and Operators (NTLs) that clarify, supplement, or provide more detail about certain requirements. NTLs may also outline what you must provide as required information in your various submissions to MMS.

§ 250.104 How may I appeal a decision made under MMS regulations?

To appeal orders or decisions issued under MMS regulations in 30 CFR parts 250 to 282, follow the procedures in 30 CFR part 290.

§ 250.105 Definitions.

Terms used in this part will have the meanings given in the Act and as defined in this section:

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

Affected State means with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved under the provisions of the Act, any State:

(1) The laws of which are declared, under section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or according to the proposed activity, will receive oil for processing, refining, or transshipment that was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

Air pollutant means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, under section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

Analyzed geological information means data collected under a permit or a lease that have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest.

Attainment area means, for any air pollutant, an area that is shown by monitored data or that is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

Best available and safest technology (BAST) means the best available and safest technologies that the Director determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best available control technology (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The Regional Director will verify the BACT on a case-by-case basis, and it may include reductions achieved through the application of processes, systems, and

techniques for the control of each air pollutant.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

Competitive reservoir means a reservoir in which there are one or more producible or producing well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.

Correlative rights when used with respect to lessees of adjacent leases, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source.

Data means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Departures means approvals granted by the appropriate MMS representative for operating requirements/procedures other than those specified in the regulations found in this part. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources, or protect life, property, or the marine, coastal, or human environment.

Development means those activities that take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of producing the minerals discovered.

Director means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

District Supervisor means the MMS officer with authority and responsibility for operations or other designated program functions for a district within an MMS Region.

Easement means an authorization for a nonpossessory, nonexclusive interest in a portion of the OCS, whether leased or unleased, which specifies the rights of the holder to use the area embraced in the easement in a manner consistent with the terms and conditions of the granting authority.

Eastern Gulf of Mexico means all OCS areas of the Gulf of Mexico the Director decides are adjacent to the State of Florida. The Eastern Gulf of Mexico is not the same as the Eastern Planning Area, an area established for OCS lease sales.

Emission offsets means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan (EP) or Development and Production Plan (DPP).

Enhanced recovery operations means pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations that alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

Existing facility, as used in § 250.303, means an OCS facility described in an Exploration Plan or a Development and Production Plan approved before June 2, 1980.

Exploration means the commercial search for oil, gas, or sulphur. Activities classified as exploration include but are not limited to:

(1) Geophysical and geological (G&G) surveys using magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulphur; and

(2) Any drilling conducted for the purpose of searching for commercial quantities of oil, gas, and sulphur, including the drilling of any additional well needed to delineate any reservoir to enable the lessee to decide whether to proceed with development and production.

Facility means:

(1) As used in § 250.130, any installation permanently or temporarily attached to the seabed on the OCS (including manmade islands and bottom-sitting structures). It includes mobile offshore drilling units (MODUs) or other vessels engaged in drilling or downhole operations, used for oil, gas, or sulphur drilling, production, or related activities. It also includes facilities for product measurement and royalty determination (e.g., Lease Automatic Custody Transfer units, gas meters) of OCS production on installations not on the OCS. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more satellite or secondary installations is a single facility. The Regional Supervisor may decide that the complexity of the individual installations justifies their classification as separate facilities.

(2) As used in § 250.303, means any installation or device permanently or temporarily attached to the seabed. It includes mobile offshore drilling units (MODUs), even while operating in the ''tender assist'' mode (i.e. with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulphur and emit or have the potential to emit any air pollutant from one or more sources. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

(3) As used in § 250.417(b), means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

Gas reservoir means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

Gas-well completion means a well completed in a gas reservoir or in the associated gas-cap of an oil reservoir.

Governor means the Governor of a State, or the person or entity designated by, or under, State law to exercise the powers granted to such Governor under the Act.

H_2S absent means:

(1) Drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S; or

(2) Drilling in the surrounding areas and correlation of geological and seismic data with equivalent stratigraphic units have confirmed an absence of H_2S throughout the area to be drilled.

H_2S present means drilling, logging, coring, testing, or producing operations

have confirmed the presence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S.

H_2S unknown means the designation of a zone or geologic formation where neither the presence nor absence of H_2S has been confirmed.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Interpreted geological information means geological knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of data and analyzed geological information.

Interpreted geophysical information means geophysical knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and analyzed geophysical information.

Lease means an agreement that is issued under section 8 or maintained under section 6 of the Act and that authorizes exploration for, and development and production of, minerals. The term also means the area covered by that authorization, whichever the context requires.

Lease term pipelines means those pipelines owned and operated by a lessee or operator that are completely contained within the boundaries of a single lease, unit, or contiguous (not cornering) leases of that *lessee* or operator.

Lessee means a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals. The term lessee also includes the MMS-approved assignee of the lease, and the owner or the MMS-approved assignee of operating rights for the lease.

Major Federal action means any action or proposal by the Secretary that is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. (2)(C) (i.e., an action that will have a significant impact on the quality of the human environment requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act).

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Maximum efficient rate (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir that will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

Maximum production rate (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

Minerals includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced.

Natural resources includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power or the use of water for the production of power.

Nonattainment area means, for any air pollutant, an area that is shown by monitored data or that is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

Nonsensitive reservoir means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

Oil reservoir means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

Oil reservoir with an associated gas cap means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

Oil-well completion means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

Operating rights means any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operator means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof. An operator may be a lessee, the MMS-approved designated agent of the lessee(s), or the holder of operating rights under an MMS-approved operating rights assignment.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person includes, in addition to a natural person, an association (including partnerships and trusts), a State, a political subdivision of a State, or a private, public, or municipal corporation.

Pipelines are the piping, risers, and appurtenances installed for transporting oil, gas, sulphur, and produced waters.

Processed geological or geophysical information means data collected under a permit or a lease that have been processed or reprocessed. Processing involves changing the form of data to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Production means those activities that take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover operations.

Production areas are those areas where flammable petroleum gas, volatile liquids or sulphur are produced, processed (e.g., compressed), stored, transferred (e.g., pumped), or otherwise handled before entering the transportation process.

Projected emissions means emissions, either controlled or uncontrolled, from a source or sources.

Regional Director means the MMS officer with responsibility and authority for a Region within MMS.

Regional Supervisor means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

Right-of-use means any authorization issued under this part to use OCS lands.

Right-of-way pipelines are those pipelines that are contained within:

(1) The boundaries of a single lease or unit, but are not owned and operated by a lessee or operator of that lease or unit;

(2) The boundaries of contiguous (not cornering) leases that do not have a common lessee or operator;

(3) The boundaries of contiguous (not cornering) leases that have a common lessee or operator but are not owned and operated by that common lessee or operator; or

(4) An unleased block(s).

Routine operations, for the purposes of subpart F, means any of the following operations conducted on a well with the tree installed:

(1) Cutting paraffin;

(2) Removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves that can be removed by wireline operations;

(3) Bailing sand;

(4) Pressure surveys;

(5) Swabbing;

(6) Scale or corrosion treatment;

(7) Caliper and gauge surveys;

(8) Corrosion inhibitor treatment;

(9) Removing or replacing subsurface pumps;

(10) Through-tubing logging (diagnostics);

(11) Wireline fishing;

(12) Setting and retrieving other subsurface flow-control devices; and

(13) Acid treatments.

Sensitive reservoir means a reservoir in which high reservoir production rates will decrease ultimate recovery. For submitting the first MER, all oil reservoirs with an associated gas cap are classified as sensitive.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Suspension means a granted or directed deferral of the requirement to produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).

Waste of oil, gas, or sulphur means:

(1) The physical waste of oil, gas, or sulphur;

(2) The inefficient, excessive, or improper use, or the unnecessary dissipation of reservoir energy;

(3) The locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulphur well(s) in a manner that causes or tends to cause a reduction in the quantity of oil, gas, or sulphur ultimately recoverable under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or

(4) The inefficient storage of oil.

Welding means all activities connected with welding, including hot tapping and burning.

Wellbay is the area on a facility within the perimeter of the outermost wellheads.

Well-completion operations means the work conducted to establish production from a well after the production-casing string has been set, cemented, and pressure-tested.

Well-control fluid means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

Western Gulf of Mexico means all OCS areas of the Gulf of Mexico except those the Director decides are adjacent to the State of Florida. The Western Gulf of Mexico is not the same as the Western Planning Area, an area established for OCS lease sales.

Workover operations means the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.

You means a lessee, the owner or holder of operating rights, a designated agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement.

Performance Standards

§ 250.106 What standards will the Director use to regulate lease operations?

The Director will regulate all operations under a lease, right-of-use and easement, or right-of-way to:

(a) Promote orderly exploration, development, and production of mineral resources;

(b) Prevent injury or loss of life;

(c) Prevent damage to or waste of any natural resource, property, or the environment; and

(d) Cooperate and consult with affected States, local governments, other interested parties, and relevant Federal agencies.

§ 250.107 What must I do to protect health, safety, property, and the environment?

(a) You must protect health, safety, property, and the environment by:

(1) Performing all operations in a safe and workmanlike manner; and

(2) Maintaining all equipment in a safe condition.

(b) You must immediately control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

(c) You must use the best available and safest technology (BAST) whenever practical on all exploration, development, and production operations. In general, we consider your compliance with MMS regulations to be the use of BAST.

(d) The Director may require additional measures to ensure the use of BAST:

(1) To avoid the failure of equipment that would have a significant effect on safety, health, or the environment;

(2) If it is economically feasible; and

(3) If the benefits outweigh the costs.

§ 250.108 What requirements must I follow for cranes and other material-handling equipment?

(a) If you operate a crane installed on fixed platforms you must:

(1) Follow the American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D);

(2) Keep inspection, testing, and maintenance records at the OCS facility for at least 2 years; and

(3) Keep crane operator qualifications at the facility for at least 4 years.

(b) You must operate and maintain all other material-handling equipment in a manner that ensures safe operations and prevents pollution.

§ 250.109 What documents must I prepare and maintain related to welding?

(a) You must submit a Welding Plan to the District Supervisor before you begin drilling or production activities on a lease. You may not begin welding until the District Supervisor has approved your plan.

(b) You must keep the following at the site where welding occurs:

(1) A copy of the plan and its approval letter; and

(2) Drawings showing the designated safe-welding areas.

§ 250.110 What must I include in my welding plan?

You must include all of the following in the Welding Plan that you prepare under § 250.109:

(a) Standards or requirements for welders;

(b) How you will ensure that only qualified personnel weld;

(c) Practices and procedures for safe welding that address:

(1) Welding in designated safe areas;

(2) Welding in undesignated areas, including wellbay;

(3) Fire watches;

(4) Maintenance of welding equipment; and

(5) Plans showing all designated safe-welding areas.

(d) How you will prevent spark-producing activities (i.e., grinding, abrasive blasting/cutting and arc-welding) in hazardous locations.

§ 250.111 Who oversees operations under my welding plan?

A welding supervisor or a designated person in charge must be thoroughly familiar with your welding plan. This person must ensure that each welder is properly qualified according to the welding plan. This person also must inspect all welding equipment before welding.

§ 250.112 What standards must my welding equipment meet?

Your welding equipment must meet the following requirements:

(a) All engine-driven welding equipment must be equipped with spark arrestors and drip pans;

(b) Welding leads must be completely insulated and in good condition;

(c) Hoses must be leak-free and equipped with proper fittings, gauges, and regulators; and

(d) Oxygen and fuel gas bottles must be secured in a safe place.

§ 250.113 What procedures must I follow when welding?

(a) Before you weld, you must move any equipment containing hydrocarbons or other flammable substances at least 35 feet horizontally from the welding area. You must move similar equipment on lower decks at least 35 feet from the point of impact where slag, sparks, or other burning materials could fall. If moving this equipment is impractical, you must protect that equipment with flame-proofed covers, shield it with metal or fire-resistant guards or curtains, or render the flammable substances inert.

(b) While you weld, you must monitor all water-discharge-point sources from hydrocarbon-handling vessels. If a discharge of flammable fluids occurs, you must stop welding.

(c) If you cannot weld in one of the designated safe-welding areas that you listed in your safe welding plan, you must meet the following requirements:

(1) You may not begin welding until:

(i) The welding supervisor or designated person in charge advises in writing that it is safe to weld.

(ii) You and the designated person in charge inspect the work area and areas below it for potential fire and explosion hazards.

(2) During welding, the person in charge must designate one or more persons as a fire watch. The fire watch must:

(i) Have no other duties while actual welding is in progress;

(ii) Have usable firefighting equipment;

(iii) Remain on duty for 30 minutes after welding activities end; and

(iv) Maintain a continuous surveillance with a portable gas detector during the welding and burning operation if welding occurs in an area not equipped with a gas detector.

(3) You may not weld piping, containers, tanks, or other vessels that have contained a flammable substance unless you have rendered the contents inert and the designated person in charge has determined it is safe to weld. This does not apply to approved hot taps.

(4) You may not weld within 10 feet of a wellbay unless you have shut in all producing wells in that wellbay.

(5) You may not weld within 10 feet of a production area, unless you have shut in that production area.

(6) You may not weld while you drill, complete, workover, or conduct wireline operations unless:

(i) The fluids in the well (being drilled, completed, worked over, or having wireline operations conducted) are noncombustible; and

(ii) You have precluded the entry of formation hydrocarbons into the wellbore by either mechanical means or a positive overbalance toward the formation.

§ 250.114 How must I install and operate electrical equipment?

The requirements in this section apply to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities.

(a) You must classify all areas according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities classified as Class I, Division 1 and Division 2.

(b) Employees who maintain your electrical systems must have expertise in area classification and the performance, operation and hazards of electrical equipment.

(c) You must install all electrical systems according to API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms. You do not have to comply with Sections 7.4, Emergency Lighting, and 9.4, Aids to Navigation Equipment.

(d) On each engine that has an electric ignition system, you must use an ignition system designed and maintained to reduce the release of electrical energy.

§ 250.115 How do I determine well producibility?

You must follow the procedures in this section to determine well producibility if your well is not in the GOM. If your well is in the GOM you must follow the procedures in either this section or in § 250.116 of this subpart.

(a) You must write to the Regional Supervisor asking for permission to determine producibility.

(b) You must either:

(1) Allow the District Supervisor to witness each test that you conduct under this section; or

(2) Receive the District Supervisor's prior approval so that you can submit either test data with your affidavit or third party test data.

(c) If the well is an oil well, you must conduct a production test that lasts at least 2 hours after flow stabilizes.

(d) If the well is a gas well, you must conduct a deliverability test that lasts at least 2 hours after flow stabilizes, or a four-point back pressure test.

§ 250.116 How do I determine producibility if my well is in the Gulf of Mexico?

If your well is in the GOM, you must follow either the procedures in § 250.115 of this subpart or the procedures in this section to determine producibility.

(a) You must write to the Regional Supervisor asking for permission to determine producibility.

(b) You must provide or make available to the Regional Supervisor, as requested, the following log, core, analyses, and test criteria that MMS will consider collectively:

(1) A log showing sufficient porosity in the producible section.

(2) Sidewall cores and core analyses that show that the section is capable of producing oil or gas.

(3) Wireline formation test and/or mud-logging analyses that show that the section is capable of producing oil or gas.

(4) A resistivity or induction electric log of the well showing a minimum of 15 feet (true vertical thickness except for horizontal wells) of producible sand in one section.

(c) No section that you count as producible under paragraph (b)(4) of this section may include any interval that appears to be water saturated.

(d) Each section you count as producible under paragraph (b)(4) of this section must exhibit:

(1) A minimum true resistivity ratio of the producible section to the nearest clean or water-bearing sand of at least 5:1; and

(2) One of the following:

(i) Electrical spontaneous potential exceeding 20-negative millivolts beyond the shale baseline; or

(ii) Gamma ray log deflection of at least 70 percent of the maximum gamma ray deflection in the nearest clean

water-bearing sand—if mud conditions prevent a 20-negative millivolt reading beyond the shale baseline.

§ 250.117 How does a determination of well producibility affect royalty status?

A determination of well producibility invokes minimum royalty status on the lease as provided in 30 CFR 202.53.

§ 250.118 Will MMS approve gas injection?

The Regional Supervisor may authorize you to inject gas on the OCS, on and off-lease, to promote conservation of natural resources and to prevent waste.

(a) To receive MMS approval for injection, you must:

(1) Show that the injection will not result in undue interference with operations under existing leases; and

(2) Submit a written application to the Regional Supervisor for injection of gas.

(b) The Regional Supervisor will approve gas injection applications that:

(1) Enhance recovery;

(2) Prevent flaring of casinghead gas; or

(3) Implement other conservation measures approved by the Regional Supervisor.

§ 250.119 Will MMS approve subsurface gas storage?

The Regional Supervisor may authorize subsurface storage of gas on the OCS, on and off-lease, for later commercial benefit. To receive MMS approval you must:

(a) Show that the subsurface storage of gas will not result in undue interference with operations under existing leases; and

(b) Sign a storage agreement that includes the required payment of a storage fee or rental.

§ 250.120 How does injecting, storing, or treating gas affect my royalty payments?

(a) If you produce gas from an OCS lease and inject it into a reservoir on the lease or unit for the purposes cited in § 250.118(b), you are not required to pay royalties until you remove or sell the gas from the reservoir.

(b) If you produce gas from an OCS lease and store it according to § 250.119, you must pay royalty before injecting it into the storage reservoir.

(c) If you produce gas from an OCS lease and treat it at an off-lease or off-unit location, you must pay royalties when the gas is first produced.

§ 250.121 What happens when the reservoir contains both original gas in place and injected gas?

If the reservoir contains both original gas in place and injected gas, when you produce gas from the reservoir you must use an MMS-approved formula to determine the amounts of injected or stored gas and gas original to the reservoir.

§ 250.122 What effect does subsurface storage have on the lease term?

If you use a lease area for subsurface storage of gas, it does not affect the continuance or expiration of the lease.

§ 250.123 Will MMS allow gas storage on unleased lands?

You may not store gas on unleased lands unless the Regional Supervisor approves a right-of-use and easement for that purpose, under §§ 250.160 through 250.166 of this subpart.

§ 250.124 Will MMS approve gas injection into the cap rock containing a sulphur deposit?

To receive the Regional Supervisor's approval to inject gas into the cap rock of a salt dome containing a sulphur deposit, you must show that the injection:

(a) Is necessary to recover oil and gas contained in the cap rock; and

(b) Will not significantly increase potential hazards to present or future sulphur mining operations.

Inspection of Operations

§ 250.130 Why does MMS conduct inspections?

MMS will inspect OCS facilities and any vessels engaged in drilling or other downhole operations. These include facilities under jurisdiction of other Federal agencies that we inspect by agreement. We conduct these inspections:

(a) To verify that you are conducting operations according to the Act, the regulations, the lease, right-of-way, the approved Exploration Plan or Development and Production Plans; or right-of-use and easement, and other applicable laws and regulations; and

(b) To determine whether equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents has been installed and is operating properly according to the requirements of this part.

§ 250.131 Will MMS notify me before conducting an inspection?

MMS conducts both scheduled and unscheduled inspections.

§ 250.132 What must I do when MMS conducts an inspection?

(a) When MMS conducts an inspection, you must provide:

(1) Access to all platforms, artificial islands, and other installations on your leases or associated with your lease, right-of-use and easement, or right-of-way; and

(2) Helicopter landing sites and refueling facilities for any helicopters we use to regulate offshore operations.

(b) You must make the following available for us to inspect:

(1) The area covered under a lease, right-of-use and easement, right-of-way, or permit;

(2) All improvements, structures, and fixtures on these areas; and

(3) All records of design, construction, operation, maintenance, repairs, or investigations on or related to the area.

§ 250.133 Will MMS reimburse me for my expenses related to inspections?

Upon request, MMS will reimburse you for food, quarters, and transportation that you provide for MMS representatives while they inspect lease facilities and operations. You must send us your reimbursement request within 90 days of the inspection.

Disqualification

§ 250.135 What will MMS do if my operating performance is unacceptable?

If your operating performance is unacceptable, MMS may disapprove or revoke your designation as operator on a single facility or multiple facilities. We will give you adequate notice and opportunity for a review by MMS officials before imposing a disqualification.

§ 250.136 How will MMS determine if my operating performance is unacceptable?

In determining if your operating performance is unacceptable, MMS will consider, individually or collectively:

(a) Accidents and their nature;

(b) Pollution events, environmental damages and their nature;

(c) Incidents of noncompliance;

(d) Civil penalties;

(e) Failure to adhere to OCS lease obligations; or

(f) Any other relevant factors.

Special Types of Approvals

§ 250.140 When will I receive an oral approval?

When you apply for MMS approval of any activity, we normally give you a written decision. The following table shows circumstances under which we may give an oral approval.

When you	We may	And
(a) Request approval orally	Give you an oral approval.	You must then confirm the oral request by sending us a written request within 72 hours.
(b) Request approval in writing.	Give you an oral approval if quick action is needed.	We will send you a written approval afterward. It will include any conditions that we place on the oral approval.
(c) Request approval orally for gas flaring.	Give you an oral approval.	You don't have to follow up with a written request unless the Regional Supervisor requires it. When you stop the approved flaring, you must promptly send a letter summarizing the location, dates and hours, and volumes of liquid hydrocarbons produced and gas flared by the approved flaring. (See 30 CFR 250, subpart K.)

§ 250.141 May I ever use alternate procedures or equipment?

You may use alternate procedures or equipment after receiving approval as described in this section.

(a) Any alternate procedures or equipment that you propose to use must provide a level of safety and environmental protection that equals or surpasses current MMS requirements.

(b) You must receive the District or Regional Supervisor's written approval before you can use alternate procedures or equipment.

(c) To receive approval, you must either submit information or give an oral presentation to the appropriate Supervisor. Your presentation must describe the site-specific application(s), performance characteristics, and safety features of the proposed procedure or equipment.

§ 250.142 How do I receive approval to use alternate procedures or equipment for departures?

We may approve departures to the operating requirements. You may apply for a departure by writing to the Regional Supervisor.

§ 250.143 How do I designate an operator?

(a) You must provide the Regional Supervisor an executed Designation of Operator form unless you are the only lessee and are the only person conducting lease operations. When there is more than one lessee, each lessee must submit the Designation of Operator form and the Regional Supervisor must approve the designation before the designated operator may begin operations on the leasehold.

(b) This designation is authority for the designated operator to act on your behalf and to fulfill your obligations under the Act, the lease, and the regulations in this part.

(c) You, or your designated operator, must immediately provide the Regional Supervisor a written notification of any change of address.

§ 250.144 How do I designate a new operator when a designation of operator terminates?

(a) When a Designation of Operator terminates, the Regional Supervisor must approve a new designated operator before you may continue operations. Each lessee must submit a new executed Designation of Operator form.

(b) If your Designation of Operator is terminated, or a controversy develops between you and your designated operator, you and your designated operator must protect the lessor's interests.

§ 250.145 How do I designate an agent or a local agent?

(a) You or your designated operator may designate for the Regional Supervisor's approval, or the Regional Director may require you to designate an agent empowered to fulfill your obligations under the Act, the lease, or the regulations in this part.

(b) You or your designated operator may designate for the Regional Supervisor's approval a local agent empowered to receive notices and submit requests, applications, notices, or supplemental information.

§ 250.146 Who is responsible for fulfilling leasehold obligations?

(a) When you are not the sole lessee, you and your co-lessee(s) are jointly and severally responsible for fulfilling your obligations under the provisions of 30 CFR parts 250 through 282, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under 30 CFR parts 250 through 282, the Regional Supervisor may require you or any or all of your co-lessees to fulfill those obligations or other operational obligations under the Act, the lease, or the regulations.

(c) Whenever the regulations in 30 CFR parts 250 through 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for complying with the regulation.

Naming and Identifying Facilities and Wells (Does Not Include MODUs)

§ 250.150 How do I name facilities and wells in the Gulf of Mexico Region?

(a) Assign each facility a letter designation except for those types of facilities identified in paragraph (c)(1) of this section. For example, A, B, CA, or CB.

(1) After a facility is installed, rename each predrilled well that was assigned only a number and was suspended temporarily at the mudline or at the surface. Use a letter and number designation. The letter used must be the same as that of the production facility, and the number used must correspond to the order in which the well was completed, not necessarily the number assigned when it was drilled. For example, the first well completed for production on Facility A would be renamed Well A–1, the second would be Well A–2, and so on; and

(2) When you have more than one facility on a block, each facility installed, and not bridge-connected to another facility, must be named using a different letter in sequential order. For example, EC 222A, EC 222B, EC 222C.

(3) When you have more than one facility on multiple blocks in a local area being co-developed, each facility installed and not connected with a walkway to another facility should be named using a different letter in sequential order with the block number corresponding to the block on which the platform is located. For example, EC 221A, EC 222B and EC 223C.

(b) In naming multiple well caissons, you must assign a letter designation.

(c) In naming single well caissons, you must use certain criteria as follows:

(1) For single well caissons not attached to a facility with a walkway, use the well designation. For example, Well No. 1;

(2) For single well caissons attached to a facility with a walkway, use the same designation as the facility. For example, rename Well No.10 as A–10; and

(3) For single well caissons with production equipment, use a letter designation for the facility name and a

letter plus number designation for the well. For example, the Well No. 1 caisson would be designated as Facility A, and the well would be Well A–1.

§ 250.151 How do I name facilities in the Pacific Region?

The operator assigns a name to the facility.

§ 250.152 How do I name facilities in the Alaska Region?

Facilities will be named and identified according to the Regional Director's directions.

§ 250.153 Do I have to rename an existing facility or well?

You do not have to rename facilities installed and wells drilled before January 27, 2000, unless the Regional Director requires it.

§ 250.154 What identification signs must I display?

(a) You must identify all facilities, artificial islands, and mobile offshore drilling units with a sign maintained in a legible condition.

(1) You must display an identification sign that can be viewed from the waterline on at least one side of the platform. The sign must use at least 3-inch letters and figures.

(2) When helicopter landing facilities are present, you must display an additional identification sign that is visible from the air. The sign must use at least 12-inch letters and figures and must also display the weight capacity of the helipad unless noted on the top of the helipad. If this sign is visible to both helicopter and boat traffic, then the sign in paragraph (a)(1) of this section is not required.

(3) Your identification sign must:

(i) List the name of the lessee or designated operator;

(ii) In the GOM OCS Region, list the area designation or abbreviation and the block number of the facility location as depicted on OCS Official Protraction Diagrams or leasing maps;

(iii) In the Pacific OCS Region, list the lease number on which the facility is located; and

(iv) List the name of the platform, structure, artificial island, or mobile offshore drilling unit.

(b) You must identify singly completed wells and multiple completions as follows:

(1) For each singly completed well, list the lease number and well number on the wellhead or on a sign affixed to the wellhead;

(2) For wells with multiple completions, downhole splitter wells, and multilateral wells, identify each completion in addition to the well name and lease number individually on the well flowline at the wellhead; and

(3) For subsea wells that flow individually into separate pipelines, affix the required sign on the pipeline or surface flowline dedicated to that subsea well at a convenient location on the receiving platform. For multiple subsea wells that flow into a common pipeline or pipelines, no sign is required.

Right-of-use and Easement

§ 250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?

MMS may grant you a right-of-use and easement on leased and unleased lands on the OCS, if you meet these requirements:

(a) You must need the right-of-use and easement to construct and maintain platforms, artificial islands, and installations and other devices at an OCS site other than an OCS lease you own, that are:

(1) Permanently or temporarily attached to the seabed; and

(2) Used for conducting exploration, development, and production activities or other operations on or off lease; or

(3) Used for other purposes approved by MMS.

(b) You must exercise the right-of-use and easement according to the regulations of this part;

(c) You must meet the requirements at 30 CFR 256.35 (Qualification of lessees); establish a regional Company File as required by MMS; and must meet bonding requirements;

(d) If you apply for a right-of-use and easement on a leased area, you must notify the lessee and give her/him an opportunity to comment on your application; and

(e) You must receive MMS approval for all platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed.

§ 250.161 What else must I submit with my application?

With your application, you must describe the proposed use giving:

(a) Details of the proposed uses and activities including access needs and special rights of use that you may need;

(b) A description of all facilities for which you are seeking authorization;

(c) A map or plat describing primary and alternate project locations; and

(d) A schedule for constructing any new facilities, drilling or completing any wells, anticipated production rates, and productive life of existing production facilities.

§ 250.162 May I continue my right-of-use and easement after the termination of any lease on which it is situated?

If your right-of-use and easement is on a lease, you may continue to exercise the right-of-use and easement after the lease on which it is situated terminates. You must only use the right-of-use and easement for the purpose that the grant specifies. All future lessees of that portion of the OCS on which your right-of-use and easement is situated must continue to recognize the right-of-use and easement for the purpose that the grant specifies.

§ 250.163 If I have a State lease, will MMS grant me a right-of-use and easement?

(a) MMS may grant a lessee of a State lease located adjacent to or accessible from the OCS a right-of-use and easement on the OCS.

(b) MMS will only grant a right-of-use and easement under this paragraph to enable a State lessee to conduct and maintain a device that is permanently or temporarily attached to the seabed (i.e., a platform, artificial island, or installation). The lessee must use the device to explore for, develop, and produce oil and gas from the adjacent or accessible State lease and for other operations related to these activities.

§ 250.164 If I have a State lease, what conditions apply for a right-of-use and easement?

(a) A right-of-use and easement granted under the heading of ''Right-of-use and easement'' in this subpart is subject to MMS regulations, 30 CFR parts 250 through 282, and any terms and conditions that the Regional Director prescribes.

(b) For the whole or fraction of the first calendar year, and annually after that, you must pay to MMS, in advance, an annual rental payment.

§ 250.165 If I have a State lease, what fees do I have to pay for a right-of-use and easement?

When you apply for a right-of-use and easement, you must pay:

(a) A nonrefundable filing fee as specified in § 250.1010(a); and (b) The first year's rental as specified in § 250.1009(c)(2).

§ 250.166 If I have a State lease, what surety bond must I have for a right-of-use and easement?

(a) Before MMS issues you a right-of-use and easement on the OCS, you must furnish the Regional Director a surety bond for $500,000.

(b) The Regional Director may require additional security from you (i.e., security above the prescribed $500,000) to cover additional costs and liabilities

for regulatory compliance. This additional surety:

(1) Must be in the form of a supplemental bond or bonds meeting the requirements of § 256.54 (General requirements for bonds) or an increase in the coverage of an existing surety bond.

(2) Covers additional costs and liabilities for regulatory compliance, including well abandonment, platform and structure removal, and site clearance from the seafloor of the right-of-use and easement.

Suspensions

§ 250.168 May operations or production be suspended?

(a) You may request approval of a suspension, or the Regional Supervisor may direct a suspension (Directed Suspension), for all or any part of a lease or unit area.

(b) Depending on the nature of the suspended activity, suspensions are labeled either Suspensions of Operations (SOO) or Suspensions of Production (SOP).

§ 250.169 What effect does suspension have on my lease?

(a) A suspension may extend the term of a lease (see § 250.180(b)). The extension is equal to the length of time the suspension is in effect, except as provided in paragraph (b) of this section.

(b) A Directed Suspension does not extend the term of a lease when the Regional Supervisor *directs* a suspension because of:

(1) Gross negligence; or (2) A willful violation of a provision of the lease or governing statutes and regulations.

§ 250.170 How long does a suspension last?

(a) MMS may issue suspensions for up to 5 years per suspension. The Regional Supervisor will set the length of the suspension based on the conditions of the individual case involved. MMS may grant consecutive suspension periods.

(b) An SOO ends automatically when the suspended operation commences.

(c) An SOP ends automatically when production begins.

(d) A Directed Suspension normally ends as specified in the letter directing the suspension.

(e) MMS may terminate any suspension when the Regional Supervisor determines the circumstances that justified the suspension no longer exist or that other lease conditions warrant termination. The Regional Supervisor will notify you of the reasons for termination and the effective date.

§ 250.171 How do I request a suspension?

You must submit your request for a suspension to the Regional Supervisor, and MMS must receive the request before the end of the lease term (i.e., end of primary term, end of the 180-day period following the last leaseholding operation, and end of a current suspension).

(a) The justification for the suspension including the length of suspension requested;

(b) A reasonable schedule of work leading to the commencement or restoration of the suspended activity;

(c) A statement that a well has been drilled on the lease and determined to be producible according to §§ 250.115, 250.116, or 250.1603 (SOP only); and

(d) A commitment to production (SOP only).

§ 250.172 When may the Regional Supervisor grant or direct an SOO or SOP?

The Regional Supervisor may grant or direct an SOO or SOP under any of the following circumstances:

(a) When necessary to comply with judicial decrees prohibiting any activities or the permitting of those activities. The effective date of the suspension will be the effective date required by the action of the court;

(b) When activities pose a threat of serious, irreparable, or immediate harm or damage. This would include a threat to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. MMS may require you to do a site-specific study. (See § 250.177(a).)

(c) When necessary for the installation of safety or environmental protection equipment;

(d) When necessary to carry out the requirements of NEPA or to conduct an environmental analysis; or

(e) When necessary to allow for inordinate delays encountered in obtaining required permits or consents, including administrative or judicial challenges or appeals.

§ 250.173 When may the Regional Supervisor direct an SOO or SOP?

The Regional Supervisor may direct a suspension when:

(a) You failed to comply with an applicable law, regulation, order, or provision of a lease or permit; or

(b) The suspension is in the interest of national security or defense.

§ 250.174 When may the Regional Supervisor grant or direct an SOP?

The Regional Supervisor may grant or direct an SOP when the suspension is in the national interest, and it is necessary because the suspension will meet one of the following criteria:

(a) It will allow you to properly develop a lease, including time to construct and install production facilities;

(b) It will allow you time to obtain adequate transportation facilities;

(c) It will allow you time to enter a sales contract for oil, gas, or sulphur. You must show that you are making an effort to enter into the contract(s); or

(d) It will avoid continued operations that would result in premature abandonment of a producing well(s).

§ 250.175 When may the Regional Supervisor grant an SOO?

The Regional Supervisor may grant an SOO when necessary to allow you time to begin drilling or other operations when you are prevented by reasons beyond your control, such as unexpected weather, unavoidable accidents, or drilling rig delays.

§ 250.176 Does a suspension affect my royalty payment?

A directed suspension may affect the payment of rental or royalties for the lease as provided in § 218.154.

§ 250.177 What additional requirements may the Regional Supervisor order for a suspension?

If MMS grants or directs a suspension under paragraph § 250.172(b), the Regional Supervisor may require you to:

(a) Conduct a site-specific study.

(1) The Regional Supervisor must approve or prescribe the scope for any site-specific study that you perform.

(2) The study must evaluate the cause of the hazard, the potential damage, and the available mitigation measures.

(3) You must pay for the study unless you request, and the Regional Supervisor agrees to arrange, payment by another party.

(4) You must furnish copies and results of the study to the Regional Supervisor.

(5) MMS will make the results available to other interested parties and to the public.

(6) The Regional Supervisor will use the results of the study and any other information that becomes available:

(i) To decide if the suspension can be lifted; and

(ii) To determine any actions that you must take to mitigate or avoid any damage to the environment, life, or property.

(b) Submit a revised Exploration Plan (including any required mitigating measures);

(c) Submit a revised Development and Production Plan (including any required mitigating measures); or

(d) Submit a revised Development Operations Coordination Document according to 30 CFR Part 250, subpart B.

Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations

§ 250.180 What am I required to do to keep my lease term in effect?

(a) If your lease is in its primary term:

(1) You must submit a report to the District Supervisor according to paragraphs (h) and (i) of this section whenever production begins initially, whenever production ceases during the last 180 days of the primary term, and whenever production resumes during the last 180 days of the primary term.

(2) Your lease expires at the end of its primary term unless you are conducting operations on your lease (see 30 CFR part 256). For purposes of this section, the term *operations* means, drilling, well-reworking, or production in paying quantities. The objective of the drilling or well-reworking must be to establish production in paying quantities on the lease.

(b) If you stop conducting operations during the last 180 days of your primary lease term, your lease will expire unless you either resume operations or receive an SOO or an SOP from the Regional Supervisor under §§ 250.172, 250.173, 250.174, or 250.175 before the end of the 180th day after you stop operations.

(c) If you extend your lease term under paragraph (b) of this section, you must pay rental or minimum royalty, as appropriate, for each year or part of the year during which your lease continues in force beyond the end of the primary lease term.

(d) If you stop conducting operations on a lease that has continued beyond its primary term, your lease will expire unless you resume operations or receive an SOO or an SOP from the Regional Supervisor under § 250.172, 250.173, 250.174, or 250.175 before the end of the 180th day after you stop operations.

(e) You may ask the Regional Supervisor to allow you more than 180 days to resume operations on a lease continued beyond its primary term when operating conditions warrant. The request must be in writing and explain the operating conditions that warrant a longer period. In allowing additional time, the Regional Supervisor must determine that the longer period is in the national interest, and it conserves resources, prevents waste, or protects correlative rights.

(f) When you begin conducting operations on a lease that has continued beyond its primary term, you must immediately notify the District Supervisor either orally or by fax or e-mail and follow up with a written report according to paragraph (g) of this section.

(g) If your lease is continued beyond its primary term, you must submit a report to the District Supervisor under paragraphs (h) and (i) of this section whenever production begins initially, whenever production ceases, whenever production resumes before the end of the 180-day period after having ceased, or whenever drilling or well-reworking operations begin before the end of the 180-day period.

(h) The reports required by paragraphs (a) and (g) of this section must contain:

(1) Name of lessee or operator;

(2) The well number, lease number, area, and block;

(3) As appropriate, the unit agreement name and number; and

(4) A description of the operation and pertinent dates.

(i) You must submit the reports required by paragraphs (a) and (g) of this section within the following timeframes:

(1) Initialization of production—within 5 days of initial production.

(2) Cessation of production—within 15 days after the first full month of zero production.

(3) Resumption of production—within 5 days of resuming production after ceasing production under paragraph (i)(2) of this section.

(4) Drilling or well reworking operations—within 5 days of beginning and completing the leaseholding operations.

(j) For leases continued beyond the primary term, you must immediately report to the District Supervisor if operations do not begin before the end of the 180-day period.

§ 250.181 When may the Secretary cancel my lease and when am I compensated for cancellation?

If the Secretary cancels your lease under this part or under 30 CFR part 256, you are entitled to compensation under § 250.184. Section 250.185 states conditions under which you will receive *no* compensation. The Secretary may cancel a lease after notice and opportunity for a hearing when:

(a) Continued activity on the lease would probably cause harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment;

(b) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time;

(c) The advantages of cancellation outweigh the advantages of continuing the lease in force; and (d) A suspension has been in effect for at least 5 years or you request termination of the suspension and lease cancellation.

§ 250.182 When may the Secretary cancel a lease at the exploration stage?

MMS may not approve an exploration plan (EP) under 30 CFR part 250, subpart B, if the Regional Supervisor determines that the proposed activities may cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits, the national security or defense, or to the marine, coastal, or human environment, and that the proposed activity cannot be modified to avoid the condition(s). The Secretary may cancel the lease if:

(a) The primary lease term has not expired (or if the lease term has been extended) and exploration has been prohibited for 5 years following the disapproval; or

(b) You request cancellation at an earlier time.

§ 250.183 When may MMS or the Secretary extend or cancel a lease at the development and production stage?

(a) MMS may extend your lease if you submit a DPP and the Regional Supervisor disapproves the plan according to the regulations in 30 CFR part 250, subpart B. Following the disapproval:

(1) MMS will allow you to hold the lease for 5 years, or less time at your request;

(2) Any time within 5 years after the disapproval, you may reapply for approval of the same or a modified plan; and

(3) The Regional Supervisor will approve, disapprove, or require modification of the plan under 30 CFR part 250, subpart B.

(b) If the Regional Supervisor has not approved a DPP or required you to submit a DPP for approval or modification, the Secretary will cancel the lease:

(1) When the 5-year period in paragraph (a)(1) of this section expires; or

(2) If you request cancellation at an earlier time.

§ 250.184 What is the amount of compensation for lease cancellation?

When the Secretary cancels a lease under §§ 250.181, 250.182 or 250.183 of this subpart, you are entitled to receive compensation under 43 U.S.C. 1334 (a)(2)(C). You must show the Director that the amount of compensation claimed is the lesser of paragraph (a) or (b) of this section:

(a) The fair value of the cancelled rights as of the date of cancellation, taking into account both:

(1) Anticipated revenues from the lease; and

(2) Costs reasonably anticipated on the lease, including:

(i) Costs of compliance with all applicable regulations and operating orders; and

(ii) Liability for cleanup costs or damages, or both, in the case of an oil spill.

(b) The excess, if any, over your revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of:

(1) All consideration paid for the lease (plus interest from the date of payment to the date of reimbursement); and

(2) All your direct expenditures (plus interest from the date of payment to the date of reimbursement):

(i) After the issue date of the lease; and

(ii) For exploration or development, or both.

(c) Compensation for leases issued before September 18, 1978, will be equal to the amount specified in paragraph (a) of this section.

§ 250.185 When is there no compensation for a lease cancellation?

You will not receive compensation from MMS for lease cancellation if:

(a) MMS disapproves a DPP because you do not receive concurrence by the State under section 307(c)(3)(B) (i) or (ii) of the CZMA, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the CZMA;

(b) You do not submit a DPP under 30 CFR part 250, subpart B or do not comply with the approved DPP;

(c) As the lessee of a nonproducing lease, you fail to comply with the Act, the lease, or the regulations issued under the Act, and the default continues for 30 days after MMS mails you a notice by overnight mail;

(d) The Regional Supervisor disapproves a DPP because you fail to comply with the requirements of applicable Federal law; or

(e) The Secretary forfeits and cancels a producing lease under section 5(d) of the Act (43 U.S.C. 1334(d)).

Information and Reporting Requirements

§ 250.190 What reporting information and report forms must I submit?

(a) You must submit information and reports as MMS requires.

(1) You may obtain copies of forms from, and submit completed forms to, the Regional or District Supervisor.

(2) Instead of paper copies of forms available from the Regional or District Supervisor, you may use your own computer-generated forms that are equal in size to MMS's forms. You must arrange the data on your form identical to the MMS form. If you generate your own form and it omits terms and conditions contained on the official MMS form, we will consider it to contain the omitted terms and conditions.

(3) You may submit digital data when the Region/District is equipped to accept it.

(b) When MMS specifies, you must include, for public information, an additional copy of such reports.

(1) You must mark it *Public Information*.

(2) You must include all required information, except information exempt from public disclosure under § 250.196 or otherwise exempt from public disclosure under law or regulation.

§ 250.191 What accident reports must I submit?

(a) You must notify the District Supervisor of all serious accidents, any death or serious injury, and all fires, explosions, and blowouts connected with any activities or operations on the lease. You must report all spills of oil or other liquid pollutants according to 30 CFR part 254.

(b) If you hold an easement, right-of-way, or other permit, and your operation is related to the exercise of the easement, right-of-way, or other permit, you must comply with paragraph (a) by notifying and reporting to the Regional Supervisor any accidents occurring on the area covered by the easement, right-of-way, or other permit.

(c) Any investigation that the Secretary or the U.S. Coast Guard (USCG) conducts under the authority of sections 22(d)(1) and (2) of the Act (43 U.S.C. 1348 d(1) and (2)), is a fact-finding proceeding with no civil or criminal issues and no adverse parties. The purpose of the investigation is to prepare a public report that determines the cause or causes of the accident. The investigation may involve panel meetings conducted by a chairperson appointed by MMS. The following requirements must be met for any panel meetings involving persons giving testimony:

(1) A person giving testimony may have legal and/or other representative(s) present to provide advice or counsel while the person is giving testimony. The chairperson may require a verbatim transcript to be made of all oral testimony. The chairperson also may accept a sworn written statement in lieu of oral testimony.

(2) Only panel members, panel's legal advisors, and any experts the panel deems necessary may address questions to any person giving testimony.

(3) The chairperson may issue subpoenas to persons to appear and provide testimony and/or documents at a panel meeting. A subpoena may not require a person to attend a panel meeting held at a location more than 100 miles from where a subpoena is served.

(4) Any person giving testimony may request compensation for mileage and fees for service within 90 days after the panel meeting. The compensated expenses must be similar to mileage and fees the U.S. District Courts allow.

§ 250.192 What evacuation statistics must I submit?

You must submit evacuation statistics to the Regional Supervisor for a natural occurrence such as an earthquake or hurricane. MMS will notify local and national authorities and the public, as appropriate. Statistics include facilities and rigs evacuated and amount of production shut-in for gas and oil. You must:

(a) Submit the statistics by fax or e-mail as soon as possible when evacuation occurs;

(b) Submit statistics on a daily basis by 11:00 a.m., as conditions allow, during the period of shut-in and evacuation;

(c) Inform MMS when you resume production; and

(d) Submit statistics either by MMS district or the total figures for your operations in the Region.

§ 250.193 Reports and investigations of apparent violations.

Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, any provision of a lease, license, or permit issued under the Act, or any provision of any regulation or order issued under the Act. When MMS receives a report of an apparent violation, or when an MMS employee detects an apparent violation after making an initial determination of the validity, MMS will investigate according to MMS procedures.

§ 250.194 What archaeological reports and surveys must I submit?

(a) If it is likely that an archaeological resource exists in the lease area, the Regional Director will notify you in writing. You must include an archaeological report in the EP or DPP. If the archaeological report suggests that an archaeological resource may be present, you must either:

(1) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(2) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by operations. This requires further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques the Regional Director considers appropriate. You must submit the investigation report to the Regional Director for review.

(b) If the Regional Director determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the Regional Director will notify you immediately. You must not take any action that may adversely affect the archaeological resource until the Regional Director has told you how to protect the resource.

(c) If you discover any archaeological resource while conducting operations in the lease area, you must immediately halt operations within the area of the discovery and report the discovery to the Regional Director. If investigations determine that the resource is significant, the Regional Director will tell you how to protect it.

§ 250.195 Reimbursements for reproduction and processing costs.

(a) MMS will reimburse you for costs of reproducing data and information that the Regional Director requests if:

(1) You deliver geophysical and geological (G&G) data and information to MMS for the Regional Director to inspect or select and retain;

(2) MMS receives your request for reimbursement and the Regional Director determines that the requested reimbursement is proper; and

(3) The cost is at your lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) MMS will reimburse you for the costs of processing geophysical information (that does not include cost of data acquisition):

(1) If, at the request of the Regional Director, you processed the geophysical data or information in a form or manner other than that used in the normal conduct of business; or

(2) If you collected the information under a permit that MMS issued to you before October 1, 1985, and the Regional Director requests and retains the information.

(c) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(d) MMS will not reimburse you for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

§ 250.196 Data and information to be made available to the public.

MMS will protect data and information you submit under this part, as described in this section. The tables in paragraphs (a) and (b) of this section describe what data and information will be made available to the public without the consent of the lessee and under what circumstances and in what time period.

(a) MMS will disclose data and information you submit on MMS forms according to the following table:

Data and information that you submit on form	In the following items	Will be released	And
(1) MMS–123, Application for Permit to Drill.	All entries except items 17, 24, and 25.	At any time	The data and information in items 17, 24, and 25 will be released according to the table in paragraph (b) of this section or when the well goes on production, whichever is earlier.
(2) MMS–124, Sundry Notices and Reports on Wells.	All entries except item 36	At any time	The data and information in item 36 will be released according to the table in paragraph (b) or when the well goes on production, whichever is earlier.
(3) MMS–125, Well Summary Report.	All entries except items 17, 24, 34, 37, and 46 through 87.	At any time	The data and information in the excepted items will be released according to the table in paragraph (b) of this section or when the well goes on production, whichever is earlier. However, items 78 through 87 will not be released when the well goes on production unless the period of time in the table in paragraph (b) has expired
(4) MMS–126, Well Potential Test Report.	All entries except item 101	When the well goes on production.	The data and information in item 101 will be released 2 years after you submit it.
(5) MMS–127, Request for Reservoir Maximum Efficient Rate (MER).	All entries except items 124 through 168.	At any time	The data and information in items 124 through 168 will be released according to the time periods in the table in paragraph (b) of this section.
(6) MMS–128, Semiannual Well Test Report.	All entries	At any time.	

(b) MMS will disclose lease data and information that you submit, but that are not usually submitted on MMS forms, according to the following table:

If	MMS will release	At this time	Special provisions
(1) The Director determines that data and information are needed to unitize operations on two or more leases, to determine whether a reservoir is competitive to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protect the environment.	Geophysical data, Geological data, Interpreted (G&G) information, Processed G&G information, Analyzed geological information.	At any time	Data and information will be shown only to persons with an interest in the issue.

If	MMS will release	At this time	Special provisions
(2) The Director determines that data and information are needed for specific scientific or research purposes for the Government.	Geophysical data, Geological data Interpreted G&G information, Processed G&G information, Analyzed geological information.	At any time	MMS will release data and information only if release would further the national interest without unduly damaging the competitive position of the lessee.
(3) Data or information is collected with high-resolution systems (e.g., bathymetry, side-scan sonar, subbottom profiler, and magnetometer) to comply with safety or environmental protection requirements.	Geophysical data, Geological data, Interpreted G&G information, Processed geological information, Analyzed geological information.	60 days after MMS receives the data or information, if the Regional Supervisor deems it necessary.	MMS will release the data and information earlier than 60 days if the Regional Supervisor determines it is needed by affected States to make decisions under subpart B. The Regional Supervisor will reconsider earlier release if you satisfy him/her that it would unduly damage your competitive position.
(4) Your lease is no longer in effect	Geophysical data, Geological data, Processed G&G information Interpreted G&G information, Analyzed geological information.	When your lease terminates.	This release time applies only if the provisions in this table governing high-resolution systems and the provisions in § 252.7 do not apply. The release time applies to the geophysical data and information only if acquired postlease for a lessee's exclusive use.
(5) Your lease is still in effect	Geophysical data Processed geophysical information, Interpreted G&G information.	10 years after you submit the data and information.	This release time applies only if the provisions in this table governing high-resolution systems and the provisions in § 252.7 do not apply. This release time applies to the geophysical data and information only if acquired postlease for a lessee's exclusive use.
(6) Your lease is still in effect and within the primary term specified in the lease.	Geological data, Analyzed geological information.	2 years after the required submittal date or 60 days after a lease sale if any portion of an offered lease is within 50 miles of a well, whichever is later.	These release times apply only if the provisions in this table governing high-resolution systems and the provisions in § 252.7 do not apply. If the primary term specified in the lease is extended under the heading of ''Suspensions'' in this subpart, the extension applies to this provision.
(7) Your lease is in effect and beyond the primary term specified in the lease.	Geological data, Analyzed geological information.	2 years after the required submittal date.	None.
(8) Data is released to the owner of an adjacent lease under subpart D of part 250.	Directional survey data	If the lessee from whose lease the directional survey was taken consents.	None.
(9) Data and information are obtained from beneath unleased land as a result of a well deviation that has not been approved by the Regional or District Supervisor.	Any data or information obtained.	At any time	None.
(10) Data and information acquired by a permit under part 251 is submitted by a lessee under part 250.	Geophysical data, Processed geophysical information, Interpreted geophysical information.	Geophysical data: 50 years, Geophysical information: 25 years after you submit it.	None.

References

§ 250.198 Documents incorporated by reference.

(a) MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by reference according to 5 U.S.C. 552(a) and 1 CFR part 51.

(1) MMS will publish any changes to these documents in the **Federal Register**.

(2) MMS may make the rule amending the document effective without prior opportunity for public comment when MMS determines:

(i) That the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties; and

(ii) MMS meets the requirements for making a rule immediately effective under 5 U.S.C. 553.

(b) MMS incorporated each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement or addendum cited in this section.

(c) Under §§ 250.141 and 250.142, you may comply with a later edition of a specific document incorporated by reference, provided:

(1) You show that complying with the later edition provides a degree of protection, safety, or performance equal to or better than would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, DC. You may obtain the documents from the publishing organizations at the addresses given in the following table:

For	Write to
ACI Standards	American Concrete Institute, P. O. Box 19150, Detroit, MI 48219.
AISC Standards	American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, IL 60680.
ANSI/ASME Codes	American National Standards Institute, Attention Sales Department, 1430 Broadway, New York, NY 10018; and/or American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.
API Recommended Practices, Specs, Standards, Manual of Petroleum Measurement Standards (MPMS) chapters.	American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005–4070.
ASTM Standards	American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.
AWS Codes	American Welding Society, 550 NW, LeJeune Road, P.O. Box 351040, Miami, FL 33135.
NACE Standards	National Association of Corrosion Engineers, P.O. Box 218340, Houston, TX 77218.

(e) This paragraph lists documents incorporated by reference. To easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.

Title of documents	Incorporated by reference at
ACI Standard 318–95, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R–95).	§ 250.908(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), (e)(2)(i).
ACI Standard 357R–84, Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984.	§ 250.900(g); § 250.908(c)(2), (c)(3).
AISC Standard Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, June 1, 1989, with Commentary.	§ 250.907(b)(1)(ii), (c)(4)(ii), (c)(4)(vii).
ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, including Appendices, 1995 Edition.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J, and the Guide to Manufacturers Data Report Forms, 1995 Edition.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1995 Edition.	§ 250.803(b)(1), (b)(1)(i); § 250.1629(b)(1), (b)(1)(i).
ANSI/ASME B 16.5–1988 (including Errata) and B 16.5a–1992 Addenda, Pipe Flanges and Flanged Fittings.	§ 250.1002(b)(2).
ANSI/ASME B 31.8–1995, Gas Transmission and Distribution Piping Systems	§ 250.1002(a).
ANSI/ASME SPPE–1–1994 and SPPE–1d–1996 ADDENDA, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations.	§ 250.806(a)(2)(i).
ANSI Z88.2–1992, American National Standard for Respiratory Protection	§ 250.417(g)(4)(iv), (j)(13)(ii).
API MPMS, Chapter 1, Vocabulary, Second Edition, July 1994, API Stock No., H01002.	§ 250.1201.
API MPMS, Chapter 2, Tank Calibration, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method, First Edition, February 1995, API Stock No. H022A1.	§ 250.1202(1)(4).
API MPMS, Chapter 2, Section 2B, Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method, First Edition, March 1989, reaffirmed May 1997, API Stock No. H30023.	§ 250.1202(1)(4).
API MPMS, Chapter 3, Tank Gauging, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, First Edition, December 1994, API Stock No. H031A1.	§ 250.1202(1)(4).
API MPMS, Chapter 3, Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, First Edition, April 1992, reaffirmed January 1997, API Stock No. H30060.	§ 250.1202(1)(4).
API MPMS, Chapter 4, Proving Systems, Section 1, Introduction, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30081.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 2, Conventional Pipe Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30082.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 3, Small Volume Provers, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30083.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 4, Tank Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30084.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 5, Master-Meter Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30085.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 6, Pulse Interpolation, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30086.	§ 250.1202(a)(3), (f)(1).
API MPMS, Chapter 4, Section 7, Field-Standard Test Measures, First Edition, October 1988, reaffirmed March 1993, API Stock No. H30087.	§ 250.1202(a)(3), (f)(1).

Title of documents	Incorporated by reference at
API MPMS, Chapter 5, Metering, Section 1, General Considerations for Measurement by Meters, Third Edition, September 1995, API Stock No. H05013.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed October 1992, API Stock No. H30102.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 3, Measurement of Liquid Hydrocarbons by Turbine Meters, Third Edition, September 1995, API Stock No. H05033.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 4, Accessory Equipment for Liquid Meters, Third Edition, September 1995, with Errata, March 1996, API Stock No. H05043.	§ 250.1202(a)(3).
API MPMS, Chapter 5, Section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed October 1992, API Stock No. H30105.	§ 250.1202(a)(3).
API MPMS, Chapter 6, Metering Assemblies, Section 1, Lease Automatic Custody Transfer (LACT) Systems, Second Edition, May 1991, reaffirmed July 1996, API Stock No. H30121.	§ 250.1202(a)(3).
API MPMS, Chapter 6, Section 6, Pipeline Metering Systems, Second Edition, May 1991, reaffirmed July 1996, API Stock No. H30126.	§ 250.1202(a)(3).
API MPMS, Chapter 6, Section 7, Metering Viscous Hydrocarbons, Second Edition, May 1991, API Stock No. H30127.	§ 250.1202(a)(3).
API MPMS, Chapter 7, Temperature Determination, Section 2, Dynamic Temperature Determination, Second Edition, March 1995, API Stock No. H07022.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 7, Section 3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, July 1985, reaffirmed May 1996, API Stock No. H30143.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 8, Sampling, Section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, Third Edition, October 1995; also available as ANSI/ASTM D 4057–88, API Stock No. H30161.	§ 250.1202(b)(4)(i), (l)(4).
API MPMS, Chapter 8, Section 2, Standard Practice for Automatic Sampling of Liquid Petroleum and Petroleum Products, Second Edition, October 1995; also available as ANSI/ASTM D 4177, API Stock No. H30162.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 9, Density Determination, Section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed October 1992; also available as ANSI/ASTM D 1298, API Stock No. H30181.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 9, Section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed October 1992, API Stock No. H30182.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Sediment and Water, Section 1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 473, API Stock No. H30201.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Section 2, Determination of Water in Crude Oil by Distillation Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4006, API Stock No. H30202.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Section 3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4007, API Stock No. H30203.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 10, Section 4, Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), Second Edition, May 1988, reaffirmed May 1998; also available as ANSI/ASTM D 96, API Stock No. H30204.	§ 250.1202(a)(3), (l)(4).
API MPMS, Chapter 11.1, Volume Correction Factors, Volume 1, Table 5A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60°F, First Edition, August 1980, reaffirmed March 1997; also available as ANSI/ASTM D 1250, API Stock No. H27000.	§ 250.1202(a)(3), (g)(3), (l)(4).
API MPMS, Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range, First Edition, August 1984, reaffirmed May 1996, API Stock No. H27300.	§ 250.1202(a)(3), (g)(4).
API MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60°F/60°F) and −50°F to 140°F Metering Temperature, Second Edition, October 1986, reaffirmed October 1992; also available as Gas Processors Association (GPA) 8286–86, API Stock No. H27307.	§ 250.1202(a)(3), (g)(4).
API MPMS, Chapter 11, Physical Properties Data, Addendum to Section 2.2, Compressibility Factors for Hydrocarbons, Correlation of Vapor Pressure for Commercial Natural Gas Liquids, First Edition, December 1994, reaffirmed March 1997; also available as GPA TP–15, API Stock No. H27308.	§ 250.1202(a)(3).
API MPMS, Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, August 1984, reaffirmed, May 1996, API Stock No. H27310.	§ 250.1202(f)(1).
API MPMS, Chapter 12, Calculation of Petroleum Quantities, Section 2, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Including Parts 1 and 2, Second Edition, May 1995; also available as ANSI/API MPMS 12.2–1981, API Stock No. H30302.	§ 250.1202(a)(3), (g)(1), (g)(2).
API MPMS, Chapter 14, Natural Gas Fluids Measurement, Section 3, Concentric Square-Edged Orifice Meters, Part 1, General Equations and Uncertainty Guidelines, Third Edition, September 1990, reaffirmed August 1995; also available as ANSI/API 2530, Part 1, 1991, API Stock No. H30350.	§ 250.1203(b)(2).
API MPMS, Chapter 14, Section 3, Part 2, Specification and Installation Requirements, Third Edition, February 1991, reaffirmed May 1996; also available as ANSI/API 2530, Part 2, 1991, reaffirmed May 1996; API Stock No. H30351.	§ 250.1203(b)(2)).
API MPMS, Chapter 14, Section 3, Part 3, Natural Gas Applications, Third Edition, August 1992, also available as ANSI/API 2530, Part 3, API Stock No. H30353.	§ 250.1203(b)(2).
API MPMS, Chapter 14, Section 5, Calculation of Gross Heating Value, Relative Density, and Compressibility Factor for Natural Gas Mixtures From Compositional Analysis, Revised, 1996; also available as ANSI/API MPMS 24.5–1981, order from Gas Processors Association, 6526 East 60th Street, Tulsa, Oklahoma 74145.§ 250.1203(b)(2).API MPMS, Chapter 14, Section 6, Continuous Density Measurement, Second Edition, April 1991, reaffirmed May 1998, API Stock No. H30346.	§ 250.1203(b)(2).

Title of documents	Incorporated by reference at
API MPMS, Chapter 14, Section 8, Liquefied Petroleum Gas Measurement, Second Edition, July 1997; reaffirmed May 1996, API Stock No. H14082.	§ 250.1203(b)(2).
API MPMS, Chapter 20, Section 1, Allocation Measurement, First Edition, September 1993, API Stock No. H30730.	§ 250.1202(k)(1).
API MPMS, Chapter 21, Section 1, Electronic Gas Measurement, First Edition, September 1993, API Stock No. H30730.	§ 250.1203(b)(4).
API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms Working Stress Design, Nineteenth Edition, August 1, 1991, API Stock No. 811–00200.	§ 250.900(g); § 250.912(a).
API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms-Working Stress Design; Twentieth Edition, July 1, 1993, API Stock No. G00200.	§ 250.900(g); § 250.912(a).
API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms-Working Stress Design; Twentieth Edition, July 1, 1993, Supplement 1, December 1996, Effective Date, February 1, 1997, API Stock No. G00205.	§ 250.900(g); § 250.912(a).
API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Third Edition, June 1, 1995, API Stock No. G02D03.	§ 250.120(c); § 250.1605(g).
API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Fourth Edition, July 1, 1994, with Errata dated June 1996, API Stock No. G14B04.	§ 250.801(e)(4); § 250.804(a)(1)(i).
API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Sixth Edition, March 1998, API Stock No. G14C06.	§ 250.802(b), (e)(2); § 250.803(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), (c)(2); § 250.804(a), (a)(5); § 250.1002(d); § 250.1004(b)(9); § 250.1628(c), (d)(2); § 250.1629(b)(2), (b)(4)(v); § 250.1630(a).
API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1, 1991, API Stock No. G07185.	§ 250.802(e)(3); § 250.1628(b)(2), (d)(3).
API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Third Edition, September 1, 1991, API Stock No. G07190.	§ 250.114(c); § 250.803(b)(9)(v); § 250.1629(b)(4)(v).
API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Third Edition, December 1, 1993, API Stock No. G07194.	§ 250.803(b)(8), (b)(9)(v); § 250.1629(b)(3), (b)(4)(v).
API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fourth Edition, July 1, 1994, API Stock No. G14H04.	§ 250.802(d).
API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. G06005.	§ 250.114(a); § 250.802(e)(4)(i); § 250.803(b)(9)(i); § 250.1628(b)(3); (d)(4)(i); § 250.1629(b)(4)(i).
API RP 2556, Recommended Practice for Correcting Gauge Tables for Incrustation, Second Edition, August 1993, API Stock No. H25560; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
API Spec Q1, Specification for Quality Programs, Fifth Edition, December 1994, API Stock No. GQ1005	§ 250.806(a)(2)(ii).
API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Seventeenth Edition, February 1, 1996, API Stock No. G06A17.	§ 250.806(a)(3); § 250.1002 (b)(1), (b)(2).
API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996, API Stock No. G06AV1..	§ 250.806(a)(3).
API Spec 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twenty-first Edition, March 31, 1994, API Stock No. G03200.	§ 250.1002(b)(1).
API Spec 14A, Specification for Subsurface Safety Valve Equipment, Ninth Edition, July 1, 1994, API Stock No. G14A09.	§ 250.806(a)(3).
API Standard 2551, Standard Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, reaffirmed January 1997; API Stock No. H25510; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, reaffirmed January 1997, API Stock No. H25520; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
API Standard 2555, Method for Liquid Calibration of Tanks, September 1966, reaffirmed January 1997, API Stock No. H25550; also available under the umbrella of the MPMS.	§ 250.1202(l)(4).
ASTM Standard C33–93, Standard Specification for Concrete Aggregates including Nonmandatory Appendix.	§ 250.908(b)(4)(i)
ASTM Standard C94–96, Standard Specification for Ready-Mixed Concrete	§ 250.908(e)(2)(i).
ASTM Standard C150–95a, Standard Specification for Portland Cement	§ 250.908(b)(2)(i).
ASTM Standard C330–89, Standard Specification for Lightweight Aggregates for Structural Concrete	§ 250.908(b)(4)(i).
ASTM Standard C595–94, Standard Specification for Blended Hydraulic Cements	§ 250.908(b)(2)(i).
AWS D1.1–96, Structural Welding Code—Steel, 1996, including Commentary	§ 250.907(b)(1)(i)
AWS D1.4–79, Structural Welding Code—Reinforcing Steel, 1979	§ 250.908(e)(3)(ii)
NACE Standard MR.01–75–96, Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment, January 1996.	§ 250.417(p)(2)
NACE Standard RP 01–76–94, Standard Recommended Practice, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production.	§ 250.907(d).

§ 250.199 Paperwork Reduction Act statements—information collection.

(a) OMB has approved the information collection requirements in part 250 under 44 U.S.C. 3501 *et seq.* The table in paragraph (e) of this section lists the subpart in the rule requiring the information and its title, provides the OMB control number, and summarizes the reasons for collecting the information and how MMS uses the information. The associated MMS forms required by this part are listed at the end of this table with the relevant information.

(b) Respondents are OCS oil, gas, and sulphur lessees and operators. The requirement to respond to the information collections in this part is mandated under the Act (43 U.S.C. 1331 *et seq.*) and the Act's Amendments of 1978 (43 U.S.C. 1801 *et seq.*). Some responses are also required to obtain or retain a benefit or may be voluntary. Proprietary information will be protected under § 250.196, Data and information to be made available to the public; parts 251 and 252; and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR part 2.

(c) The Paperwork Reduction Act of 1995 requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) Send comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

(e) MMS is collecting this information for the reasons given in the following table:

30 CFR 250 subpart/title (OMB control No.)	Reasons for collecting information and how used
(1) Subpart A, General (1010–0114)	To inform MMS of actions taken to comply with general operational requirements on the OCS. To ensure that operations on the OCS meet statutory and regulatory requirements, are safe and protect the environment, and result in diligent exploration, development, and production on OCS leases. To support the unproved and proved reserve estimation, resource assessment, and fair market value determinations.
(2) Subpart B, Exploration and Development and Production Plans (1010–0049).	To inform MMS, States, and the public of planned exploration, development, and production operations on the OCS. To ensure that operations on the OCS are planned to comply with statutory and regulatory requirements, will be safe and protect the human, marine, and coastal environment, and will result in diligent exploration, development, and production of leases.
(3) Subpart C, Pollution Prevention and Control (1010–0057)	To inform MMS of measures to be taken to prevent water and air pollution. To ensure that appropriate measures are taken to prevent water and air pollution.
(4) Subpart D, Oil and Gas Drilling Operations (1010–0053)	To inform MMS of the equipment and procedures to be used in drilling operations on the OCS. To ensure that drilling operations are safe and protect the human, marine, and coastal environment.
(5) Subpart E, Oil and Gas Well-Completion Operations (1010–0067)	To inform MMS of the equipment and procedures to be used in well-completion operations on the OCS. To ensure that well-completion operations are safe and protect the human, marine, and coastal environment.
(6) Subpart F, Oil and Gas Well-Workover Operations (1010–0043)	To inform MMS of the equipment and procedures to be used during well-workover operations on the OCS. To ensure that well-workover operations are safe and protect the human, marine, and coastal environment.
(7) Subpart G, Abandonment of Wells (1010–0079)	To inform MMS of procedures to be used during the temporary and permanent abandonment of wells. To ensure that wells are abandoned in a manner that is safe and minimizes conflicts with other uses of the OCS.
(8) Subpart H, Oil and Gas Production Safety Systems (1010–0059)	To inform MMS of the equipment and procedures to be used during production operations on the OCS. To ensure that production operations are safe and protect the human, marine, and coastal environment.
(9) Subpart I, Platforms and Structures (1010–0058)	To provide MMS with information regarding the design, fabrication, and installation of platforms on the OCS. To ensure the structural integrity of platforms installed on the OCS.
(10) Subpart J, Pipelines and Pipeline Rights-of-Way (1010–0050)	To provide MMS with information regarding the design, installation, and operation of pipelines on the OCS. To ensure that pipeline operations are safe and protect the human, marine, and coastal environment.
(11) Subpart K, Oil and Gas Production Rates (1010–0041)	To inform MMS of production rates for hydrocarbons produced on the OCS. To ensure economic maximization of ultimate hydrocarbon recovery.
(12) Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security (1010–0051).	To inform MMS of the measurement of production, commingling of hydrocarbons, and site security plans. To ensure that produced hydrocarbons are measured and commingled to provide for accurate royalty payments and security is maintained.
(13) Subpart M, Unitization (1010–0068)	To inform MMS of the unitization of leases. To ensure that unitization prevents waste, conserves natural resources, and protects correlative rights.
(14) Subpart N, Remedies and Penalties (1010–0121)	The requirements in subpart N are exempt from the Paperwork Reduction Act of 1995 according to 5 CFR 1320.4.
(15) Subpart O, Training (1010–0078)	To inform MMS of training program curricula, course schedules, and attendance. To ensure that training programs are technically accurate and sufficient to meet safety and environmental requirements, and that workers are properly trained to operate on the OCS.

30 CFR 250 subpart/title (OMB control No.)	Reasons for collecting information and how used
(16) Subpart P, Sulphur Operations (1010–0086)	To inform MMS of sulphur exploration and development operations on the OCS. To ensure that OCS sulphur operations are safe; protect the human, marine, and coastal environment; and will result in diligent exploration, development, and production of sulphur leases.
(17) Forms MMS–123, Application for Permit to Drill, and MMS–123S, Supplemental APD Information Sheet, Subparts D, E, P (1010–0044 and 1010–0131).	To inform MMS of the procedures and equipment to be used in drilling operations. To ensure that drilling and well-completion are safe and protect the environment, use adequate equipment, conform with provisions of the lease, and the public is informed.
(18) Form MMS–124, Sundry Notices & Reports on Wells, Subparts D, E, F, G, P (1010–0045).	To inform MMS of well-completion and well-workover operations, changes to any ongoing well operations, and well abandonment operations. To ensure that MMS has up-to-date and accurate information on OCS drilling and other lease operations; operations are safe and protect the human, marine, and coastal environment; abandoned sites are cleared of obstructions; and the public is informed.
(19) Form MMS–125, Well Summary Report, Subparts D, E, F, P (1010–0046).	To inform MMS of the results of well-completion or well-workover operations or changes in well status or condition. To ensure that MMS has up-to-date and accurate information on the status and condition of wells.
(20) Form MMS–126, Well Potential Test Report, Subpart K (1010–0039).	To inform MMS of the production potential of an oil or gas well and to verify a requested production rate. To ensure that production results in ultimate full recovery of hydrocarbons, and energy resources are produced at a prudent rate.
(21) Form MMS–127, Request for Reservoir Maximum Efficiency Rate (MER), Subpart K (1010–0018).	To inform MMS of data concerning oil and gas well-completion in a rate-sensitive reservoir and to verify requested efficiency rate. To ensure that reservoirs are classified correctly and the requested production rate will not waste oil or gas.
(22) Form MMS–128, Semiannual Well Test Report, Subpart K (1010–0017).	To inform MMS of the status and capacity of gas wells and verify production capacity. To ensure that depletion of reservoirs results in greatest ultimate recovery of hydrocarbons.
(23) Form MMS–131, Performance Measures Data (Voluntary) (1010–0112).	To collect data related to a set of performance measures. To evaluate the effectiveness of industry's continued improvement of safety and environmental management in the OCS.
(24) Form MMS–132, Evacuation Statistics (used in the GOM Region), Subpart A (1010–0114).	To inform MMS in the event of a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes. To advise the USCG of rescue needs, and to alert the news media and interested public entities when production is shut in and when resumed.
(25) Form MMS–133, Weekly Activity Report (used in the GOM Region), Subpart D (1010–0132).	To inform MMS of well status, well and casing tests, and well casing configuration data. To have accurate data and information on the wells under MMS jurisdiction to ensure compliance with approved plans.

5. In § 250.203(m), the citation ''250.112'' is revised to read ''250.182''.

6. In § 250.204(p) and (r), the citation ''250.112'' is revised to read ''250.183''.

7. In § 250.304(e)(2), the citation ''250.110'' is revised to read ''250.174''.

8. Sections 250.402, 250.403, 250.507, 250.508, 250.607, and 250.608 are removed and reserved.

9. In § 250.414(a), the citation ''250.106(a)'' is revised to read ''250.140'' and in § 250.414(g), the citation ''250.117'' is revised to read ''250.190''.

10. In § 250.415(d), the citation ''250.117'' is revised to read ''250.190''.

11. In § 250.416(b), the citation ''250.110'' is revised to read ''250.170''.

12. In § 250.513(d), the citation ''250.117'' is revised to read ''250.190''.

13. In § 250.1102(a) (9), (b)(8), and (b)(9), the citation ''250.117'' is revised to read ''250.190''.

14. In the introductory text of § 250.1201, the citation ''250.101'' is revised to read ''250.198''.

15. In § 250.1202(a)(3), (b)(4)(i), the introductory text of (g), (k)(1), (l)(4), the citation ''250.101'' is revised to read ''250.198''.

16. In § 250.1203(b)(2) and (b)(4), the citation ''250.101'' is revised to read ''250.198''.

17. In § 250.1301(d), (g)(1), (g)(2)(ii), the citation ''250.110'' is revised to read ''250.170'' and the citation ''250.113'' in (d) and (g)(1) is revised to read ''250.180''.

18. In § 250.1507, in the table, the second column for the entry ''Welding and burning'' is revised to ''A''.

19. In § 250.1617(a), the citation ''250.106(a)'' is revised to read ''250.140'' and in paragraph (d), the citation ''250.117'' is revised to read ''250.190''.

20. In § 250.1618(a), the citation ''250.106(a)'' is revised to read ''250.140''.

21. In § 250.1619(b), the citation ''250.110'' is revised to read ''250.170''.

22. In § 250.1629(a), the citation ''250.291'' is revised to read ''250.1628''.

PART 252—OUTER CONTINENTAL SHELF (OCS) OIL AND GAS INFORMATION PROGRAM

23. The authority citation continues to read as follows:

Authority: OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; Freedom of Information Act, 5 U.S.C. 552.

24. In § 252.7(a)(2)(i) and (ii), the citation ''250.4'' is revised to read ''250.106''.

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

25. The authority citation continues to read as follows:

Authority: 33 U.S.C. 2701 *et seq.*

26. In § 253.11(b)(2), the citation ''250.108'' is revised to read ''250.143''.

27. In § 253.51(d), the citation ''250.110'' is revised to read ''250.170''.

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

28. The authority citation for part 256 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 42 U.S.C. 6213.

29. Section 256.1 is revised to read as follows:

§ 256.1 Purpose.

The purpose of the regulations in this part is to establish the procedures under which the Secretary of the Interior (Secretary) will exercise the authority to administer a leasing program for oil, gas and sulphur. The procedures under which the Secretary will exercise the authority to administer a program to grant rights-of-way, rights-of-use and easements are addressed in other parts .

30. Section 256.4, Authority, is revised to read as follows:

§ 256.4 Authority.

The outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, and sulphur, in submerged lands of the outer Continental Shelf (OCS). The Act authorizes the Secretary to grant rights-of-way, rights-of-use and easements through the submerged lands of the OCS. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

31. Section 256.35 is amended by adding paragraph (c) as follows:

256.35 Qualifications of lessees.

* * * * *

(c) MMS may disqualify you from acquiring any new leaseholdings or lease assignments if your operating performance is unacceptable according to 30 CFR 250.135.

32–33. In § 256.70, the citation ''250.113'' is revised to read ''250.180''.

34. Section 256.73 is revised to read as follows:

§ 256.73 Effect of suspensions on lease term.

(a) A suspension may extend the term of a lease (see 30 CFR 250.171) with the extension being the length of time the suspension is in effect except as provided in paragraph (b) of this section.

(b) A Directed Suspension does not extend the lease term when the Regional Supervisor directs a suspension because of:

(1) Gross negligence; or (2) A willful violation of a provision of the lease or governing regulations.

(c) MMS may issue suspensions for a period of up to 5 years per suspension. The Regional Supervisor will set the length of the suspension based on the conditions of the individual case involved. MMS may grant consecutive suspensions. For more information on suspension of operations or production refer to the section under the heading ''Suspensions'' in 30 CFR part 250, subpart A.

35. In § 256.77(d)(3), the citation ''250.112'' is revised to read ''250.182''.

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

36. The authority citation for part 282 continues to read as follows:

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

37. In § 282.28(a), the citation ''250.126'' is revised to read ''250.194''.

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federal register

Tuesday
December 28, 1999

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 545

Inmate Financial Responsibility Program: Spending Limitations; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP–1050–F]

RIN 1120–AA49

Inmate Financial Responsibility Program: Spending Limitations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) is amending its regulations on the inmate financial responsibility program (IFRP) to impose a spending limitation of at least $25 per month upon the commissary purchases of IFRP refusees, excluding the purchase of stamps, telephone credits, and, if purchased by a common fare participant, Kosher/Halal certified shelf-stable entrees. Additional changes to the regulations are also being made for the sake of clarity, editorial consistency, and for administrative efficiency. These actions are intended to encourage inmates to participate in the IFRP.

EFFECTIVE DATE: January 27, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) is amending its regulations on the inmate financial responsibility program (IFRP) (28 CFR part 545, subpart B). A proposed rule on this subject was published in the **Federal Register** on January 2, 1996 (61 FR 92).

In accordance with provisions of the Settlement Agreement in *Washington* v. *Reno*, section III A, the Bureau proposed a rule requiring only debit telephone calling privileges for inmates who refuse to participate in the IFRP, and to limit such debit calling privileges to 60 minutes of debit calls per month. This proposed limitation would not take effect until installation of the Bureau's new nation-wide inmate telephone system, per terms of the settlement in *Washington* v. *Reno*. Because that telephone system has not been installed, the Bureau cannot finalize that rule at this time.

The Bureau also proposed to amend 28 CFR 545.11(d)(6) with respect to the monthly commissary spending limitation imposed upon inmates who refuse to participate in the IFRP. This provision previously prohibited inmates who refuse to participate in IFRP from purchasing any items in excess of the monthly spending limitation for all inmates, including special purchase items like sports equipment, hobby crafts, etc. The Bureau had proposed to revise this provision to impose upon IFRP refusees a more stringent monthly spending limitation than that imposed upon all inmates. Pursuant to the terms of the settlement in *Washington* v. *Reno*, the proposed rule specified that the monthly spending limitation upon IFRP refusees shall be at least $25 per month and excludes purchases of stamps and telephone credits. No comment was received on this aspect of the proposed rule. The Bureau is adopting this same proposed provision as final, except that the Bureau has expanded the list of items excluded from the more stringent spending limitation to include purchases by a common fare participant of Kosher/Halal certified shelf-stable entrees. As a further clarification, the final rule states that purchases of stamps, phone credits, and shelf-stable Kosher/Halal items remain subject to the limitations set forth in Bureau regulations and policies for these items.

The Bureau is making additional changes to § 545.11 for the sake of clarity, editorial consistency, and for administrative efficiency. In the introductory text of paragraph (b), the provisions describing the financial plan calculation have been revised for the sake of clarity. In paragraph (b)(2), the designated official for approving allotments less the 50% minimum is now the Unit Manager rather than the Warden. This delegation is being made for reasons of administrative efficiency. In (b)(9) the concluding punctuation has been revised for editorial consistency. Finally, in paragraph (d)(2) the Bureau is clarifying that IFRP refusees may be eligible for medical furloughs.

Interested persons may submit further comments concerning this rule by writing to the Rules Unit, Bureau of Prisons, 320 First Street, NW, HOLC Room 754, Washington, DC 20534. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

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

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

List of Subjects in 28 CFR Part 545

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 545 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 545.11, the introductory text of paragraph (b) is amended by removing the third sentence and adding two new sentences in its place, paragraph (b)(2) is amended by revising the second sentence, paragraphs (d)(2) and (d)(6) are revised, and paragraph (d)(9) is amended by removing the period and adding in its place a semi-colon:

§ 545.11 Procedures.

* * * * *

(b) *Payment.* * * * In developing an inmate's financial plan, the unit team shall first subtract from the trust fund account the inmate's minimum payment schedule for UNICOR or non-UNICOR work assignments, set forth in paragraphs (b)(1) and (b)(2) of this section. The unit team shall then exclude from its assessment $75.00 a month deposited into the inmate's trust fund account. * * *

* * * * *

(2) * * * Any allotment which is less than the 50% minimum must be approved by the Unit Manager. * * *

* * * * *

(d) * * *

(2) The inmate will not receive any furlough (other than possibly an emergency or medical furlough);

* * * * *

(6) The inmate shall be subject to a monthly commissary spending limitation more stringent than the monthly commissary spending limitation set for all inmates. This more stringent commissary spending limitation for IFRP refusees shall be at least $25 per month, excluding purchases of stamps, telephone credits, and, if the inmate is a common fare participant, Kosher/Halal certified shelf-stable entrees to the extent that such purchases are allowable under pertinent Bureau regulations;

* * * * *

[FR Doc. 99–33484 Filed 12–27–99; 8:45 am]

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federal register

Tuesday
December 28, 1999

Part VII

Department of Education

34 CFR Part 614

Preparing Tomorrow's Teachers to Use Technology; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 614

Preparing Tomorrow's Teachers to Use Technology

RIN 1840–AC81

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds the regulations governing the Preparing Tomorrow's Teachers to Use Technology program, which provides grants to consortia that help future teachers become proficient in the use of modern learning technologies. This program provides support for two types of grants: Implementation grants and Catalyst grants.

DATES: These regulations are effective January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Gonzales, Office of Postsecondary Education, 1990 K Street, NW., Room 6153, Washington, DC. 20006–8526. Telephone: (202) 502–7788. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

On October 22, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for Preparing Tomorrow's Teachers to Use Technology in the **Federal Register** (64 FR 57287). In the preamble to the NPRM, the Secretary discussed on pages 57287 and 57288 the major regulations proposed for Preparing Tomorrow's Teachers to Use Technology. These included the following:

Establishing the purpose of the Preparing Tomorrow's Teachers to Use Technology program as helping future teachers to become proficient in the use of modern learning technologies.

Limiting grants made under this program to support training for pre-service teachers by prohibiting the use of grant funds for in-service training, or for continuing education for currently certified teachers.

Defining the eligible applicants for the program is a consortium composed of at least two or more organizations that could include: institutions of higher education (IHEs), schools of education, community colleges, State educational agencies (SEAs), local educational agencies (LEAs), private elementary or secondary schools, professional associations, foundations, museums, libraries, private sector businesses, public or private nonprofit organizations, community-based organizations, or any other entity able to contribute to the teacher preparation program reforms that produce technology-proficient educators.

Listing the regulations from the Education Department's General Administrative Regulations that would apply to the program, and referencing these regulations.

Requiring that the lead applicant for the consortium be a nonprofit member of the consortium, and that only the lead applicant could serve as the fiscal agent for the consortium.

Establishing the matching requirements for consortia by requiring that the Federal share of the cost of the project not exceed fifty percent of the total project cost for each budget period.

Limiting the maximum indirect cost rate for all consortium partners and any cost-type contract made under these grants to eight percent of a modified total direct cost base or the partner's negotiated indirect cost rate, whichever rate is lower.

Prohibiting the use of Federal grant funds to pay for student financial assistance, such as scholarships, stipends, or other financial aid incentives to recruit future teachers or to subsidize the costs of their education.

Requiring that applications for the program be received by the deadline date that will be announced in a separate notice in the **Federal Register**.

Except for minor editorial revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In the NPRM the Secretary invited comments on the proposed regulations. In response to our invitation in the NPRM, three parties submitted comments on the proposed regulations. An analysis of the comments follows.

Comments: One commenter encouraged the program to allow the use of funds for in-service professional development for current teachers to help address their discomfort with technology.

Discussion: The change recommended by the commenter would materially alter the purpose of the program. Several recent national reports have concluded that teacher preparation has emerged as the critical factor limiting the contributions of new technologies to improved learning—and these findings respond to the need to restructure the teacher preparation system. Federal, State and local agencies are investing billions of dollars a year to equip schools with computers and modern communications networks. Recent GAO testimony [1] based upon an agency survey on the use of Federal funds for teacher training programs for elementary and secondary teachers indicates that while $1.5 billion in Federal funds are used in part for teacher training, the majority goes towards in-service training while only six percent support goes towards pre-service training.

We recognize that reeducating the existing teaching force to take full advantage of technological learning tools will require extensive professional development over many years. But this problem is being greatly magnified by the fact that new teachers entering the profession are not being adequately prepared to use the modern technologies they will find in their 21st century schools. In less than a decade over two million teachers must be recruited to replace retiring teachers, to meet increasing student enrollment demands, and to achieve smaller class size. No school system in America can ensure that these future teachers are well-prepared, technology-proficient educators without significant improvement and restructuring of the teacher preparation system. If our information technology investments are to pay off in improved education, this program must focus limited Federal funds to ensure that future teachers are technology-proficient educators, who arrive at their schools ready to use modern learning resources to help 21st Century students meet high standards.

Changes: None.

Comments: One commenter suggested adding the phrase ''research-proven, standards-led'' to the purpose of the program to ensure that all students are taught to use technology in meaningful ways.

This program provides grants to help future teachers become proficient in the use of modern learning technologies within the context of research-proven and standards-led instructional practices. The program also supports training for pre-service teachers in modern learning technologies within the context of research-proven and standards-led instructional practices.

Discussion: The language proposed by the commenter does not make the regulations clearer. The underlying goal

[1] United States General Accounting Office, ''Teacher Training—over $1.5 Billion Federal Funds Invested in Many Programs,'' Statement of Marnie S. Shaul, Associate Director, Education, Workforce, and Income Security Issues, Health Education, and Human Services Division, Released May 5, 1999.

of ensuring that all student populations are enabled to use technology in meaningful ways will be addressed in the application package. The application package will emphasize the importance of technology-proficient future teachers by encouraging all applicants to address equitable digital access for all populations to help all students achieve to high standards. The application package will also indicate that technology-proficient future teachers utilize technology to improve the teaching and learning process.

Changes: None.

Comments: One commenter suggested listing or identifying specific potential consortium partners such as the North Central Regional Education Laboratory (NCREL), the National Computational Science Alliance (NCSA), and the Department of Energy Laboratories.

Discussion: The regulations leave the consortium composition to the discretion of the applicant. The regulations list general types of organizations that could be included and these could include the commenter's specific potential consortium partners. The regulations also encourage as an eligible applicant any organization able to contribute to the teacher preparation reforms that produce technology-proficient educators.

Changes: None.

Comments: One commenter suggested eliminating the matching requirements for consortia to better enable all schools to fairly compete. Instead, a ''match'' could be used as an indicator of commitment.

Discussion: It is imperative to require matching commitments to better leverage limited Federal funding and to help build and ensure project sustainability beyond the life of the Federal grant. Over 500 eligible applicants applied for FY 1999 funds that resulted in 225 awards. The applicants were from a broad cross-section of institutions and organizations. Based upon the overwhelming response from the field and the range of types of organizations funded, it seems that the matching requirement does not preclude ''poor'' institutions from the competition.

Changes: None.

Comments: One commenter suggested that the demonstration of ''Institution-wide'' support is almost impossible at large universities.

Discussion: The demonstration of ''Institution-wide'' support is not required for funding under this program. However, ''Institution-wide'' support is important to demonstrating an effective response to the preparation of technology proficient teachers. Thus, it is to the advantage of potential applicants to show collaboration within their university.

Changes: None.

Comments: One commenter suggested allocating preference points for applicants addressing looming teacher shortages.

Discussion: The focus of this program is on preparing technology proficient future teachers. Developing remedies for possible teacher shortages is beyond the scope of this program. Extra points for addressing teacher shortages is not consistent with the program purpose.

Changes: None.

Comments: Once commenter felt that that the program should specify a more precise monetary or percentage range for the amount of grant funds to be used for project evaluation.

Discussion: The amount of money to be allocated for evaluation was not addressed in the regulations. It is up to the applicant to determine the appropriate level of evaluation investment for the proposed project.

Changes: None.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, D.C., area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number: 84.342, Preparing Tomorrow's Teachers to Use Technology program)

List of Subjects in 34 CFR Part 614

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

(**Program Authority:** 20 U.S.C. 6832)

Dated: December 21, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

For the reasons stated in the preamble, the Secretary amends Chapter VI of title 34 of the Code of Federal Regulations by adding a new part 614 to read as follows:

PART 614—PREPARING TOMORROW'S TEACHERS TO USE TECHNOLOGY

Sec.

614.1 What is the purpose of the Preparing Tomorrow's Teachers to Use Technology program?
614.2 Who is eligible for an award?
614.3 What regulations apply to this program?
614.4 Which member of the consortium must act as the lead applicant and fiscal agent?
614.5 What are the matching requirements for the consortia?
614.6 What is the maximum indirect cost rate for all consortium members and any cost-type contract?
614.7 What prohibitions apply to the use of grant funds under this program?
614.8 What is the significance of the deadline date for applications?

Authority: 20 U.S.C. 6832, unless otherwise noted.

§ 614.1 What is the purpose of the Preparing Tomorrow's Teachers to Use Technology program?

(a) This program provides grants to help future teachers become proficient in the use of modern learning technologies and to support training for pre-service teachers.

(b) A grantee may not use funds under this program for in-service training or

continuing education for currently certified teachers.

(Authority: 20 U.S.C. 6832)

§ 614.2 Who is eligible for an award?

(a) Except as provided in paragraph (b) of this section, an eligible applicant is a consortium that includes at least two or more of the following: institutions of higher education, schools of education, community colleges, State educational agencies, local educational agencies, private elementary or secondary schools, professional associations, foundations, museums, libraries, private sector businesses, public or private nonprofit organizations, community based organizations, or any other entities able to contribute to teacher preparation program reforms that produce technology-proficient teachers.

(b) At least one member of the consortium must be a nonprofit entity.

(Authority: 20 U.S.C. 6832)

§ 614.3 What regulations apply to this program?

The following regulations apply to Preparing Tomorrow's Teachers to Use Technology:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except for § 75.102.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 614.

(Authority: 20 U.S.C. 6832)

§ 614.4 Which member of the consortium must act as the lead applicant and fiscal agent?

(a) For purposes of 34 CFR 75.127, the lead applicant for the consortium must be a nonprofit member of the consortium.

(b) The lead applicant must serve as the fiscal agent.

(Authority: 20 U.S.C. 6832)

§ 614.5 What are the matching requirements for the consortia?

A consortium must provide at least 50 percent of the total project cost per budget period of the project using non-Federal funds.

(Authority: 20 U.S.C. 6832)

§ 614.6 What is the maximum indirect cost rate for all consortium members and any cost-type contract?

(a) The maximum indirect cost rate for all consortium partners and any cost-type contract made under these grants is eight percent of a modified total direct cost base or the partner's negotiated indirect cost rate, whichever rate is lower.

(b) For purposes of this section, a modified total direct cost base is total direct costs less stipends, tuition, and related fees, and capital expenditures of $5,000 or more.

(c) Indirect costs in excess of the maximum may not be—

(1) Charged as direct costs by the grantee;

(2) Used by the grantee to satisfy matching or cost sharing requirements; or

(3) Charged by the grantee to another Federal award.

(Authority: 20 U.S.C. 6832)

§ 614.7 What prohibitions apply to the use of grant funds under this program?

Grant funds may not be used—

(a) To recruit prospective teachers;

(b) To support the cost of a prospective teacher's education through any form of financial aid assistance including scholarships, internships, or student stipends; or

(c) For in-service training or continuing education for currently certified teachers.

(Authority: 20 U.S.C. 6832)

§ 614.8 What is the significance of the deadline date for applications?

Notwithstanding § 75.102 of this chapter, an application for a grant under this program must be received by the deadline date that will be announced in a separate notice in the **Federal Register**.

(Authority: 20 U.S.C. 6832)

[FR Doc. 99–33554 Filed 12–27–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.342]

Preparing Tomorrow's Teachers To Use Technology

AGENCY: Office of Postsecondary Education (OPE), Department of Education.

ACTION: Notice of requirements and invitation for applications for new awards for fiscal year (FY) 2000.

Purpose of Program

The Preparing Tomorrow's Teachers to Use Technology program provides grants to consortia that are helping future teachers become proficient in the use of modern learning technologies. This program addresses looming teacher shortages by developing well-qualified, technology-proficient teachers, who are prepared to teach in 21st century schools, particularly schools in low-income communities or rural areas. This program provides support for two types of grants: implementation grants, and catalyst grants.

Eligible Applicants

Only consortia may receive grants under this program. A consortium must include at least two members. Consortium members may include institutions of higher education (IHEs), Schools of Education, State educational agencies (SEAs), local educational agencies (LEAs), private schools, professional associations, foundations, museums, libraries, for profit agencies and organizations, nonprofit organizations, community-based organizations, and others.

Note: In each consortium a participating nonprofit member must be designated as the ''applicant'' for purposes of 34 CFR 75.128 and must act as the fiscal agent.

Applications Available: January 7, 2000.

Deadline for Transmittal of Applications: March 7, 2000.

Deadline for Intergovernmental Review: May 8, 2000.

Estimated Available Funds: $75,000,000.

Estimated Range of Awards: $200,000–$400,000 for implementation grants, and $500,000–$700,000 for catalyst grants.

Estimated Average Size of Awards: $380,000 for implementation grants, and $600,000 for catalyst grants.

Estimated Number of Awards: 80 implementation grants, and 15 catalyst grants.

Project Period: 36 months for implementation grants, and 36 months for catalyst grants.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; (b) The regulations for this program in competition. The selection criteria and factors to be used for this competition will be provided in the application package.

Application Review Procedures

The Secretary announces the use of a multi-tier review process to evaluate all applications submitted for new awards under the FY 2000 Preparing Tomorrow's Teachers to Use Technology program. The Secretary takes this action to ensure a thorough review and assessment of the large number of applications that are expected to be received under the FY 2000 competition. This multi-tier review process does not affect the contents of applications in this competition

For Applications Contact

Beginning January 7, 2000, telephone (202) 502–7788 or fax requests to (202)502–7775. The application package also will be available from the Preparing Tomorrow's Teachers to Use Technology program web site at *http://www.ed.gov/teachtech* in January, 2000.

FOR FURTHER INFORMATION CONTACT: Erika Kirby, Preparing Tomorrow's Teachers to Use Technology, U.S. Department of Education, 1990 K Street, NW, Suite 6160,Washington DC 20202–5131. Telephone: (202) 502–7788. E-mail: erika__kirby@ed.gov Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in Washington, DC, area at (202) 512–1530.

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Program Authority: 20 U.S.C. 6832.

Dated: December 21, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33555 Filed 12–27–99; 8:45 am]

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federal register

Tuesday
December 28, 1999

Part VIII

Department of Defense

Department of the Air Force

32 CFR Part 806

Freedom of Information Act Program; Final Rule

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806

RIN: 0701–AA–61

Freedom of Information Act Program

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising our rules on the Freedom of Information Act Program of the Code of Federal Regulations (CFRs) to reflect current policies. Part 806 implements Air Force Policy Directive (AFPD) 37–1, Air Force Information Management (will convert to AFPD 33–3), and applies to all Air Force activities. It provides policies and procedures for implementing the Freedom of Information Act (FOIA), Title 5 United States Code (U.S.C.) Section 552, as amended, and ''For Official Use Only (FOUO)'' information requirements.

EFFECTIVE DATE: November 1, 1999.

ADDRESSES: Mrs. Anne P. Rollins, HQ AFCIC/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250, 703–588–6187.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins, HQ AFCIC/ITC, 703–588–6187.

List of Subjects in 32 CFR Part 806

Freedom of Information.

For the reasons set forth in the preamble, the Department of the Air Force is revising 32 CFR part 806 as follows:

PART 806—AIR FORCE FREEDOM OF INFORMATION ACT PROGRAM

Sec.

806.1 Summary of revisions.
806.2 Applicability.
806.3 Public information.
806.4 Definitions.
806.5 Responsibilities.
806.6 Prompt action on requests.
806.7 Use of exemptions.
806.8 Description of requested record.
806.9 Referrals.
806.10 Records management.
806.11 FOIA reading rooms.
806.12 Record availability.
806.13 5 U.S.C. 552 (a)(2) materials.
806.14 Other materials.
806.15 FOIA exemptions.
806.16 For official use only.
806.17 Release and processing procedures.
806.18 Initial determinations.
806.19 Reasonably segregable portions.
806.20 Records of non-U.S. government source.
806.21 Appeals.
806.22 Time limits.
806.23 Delay in responding to an appeal.
806.24 Fee restrictions.
806.25 Annual report.
806.26 Addressing FOIA requests.
806.27 Samples of Air Force FOIA processing documents.
806.28 Records with special disclosure procedures.
806.29 Administrative processing of Air Force FOIA requests.
806.30 FOIA exempt information examples.
806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of nongovernment contract-related information.
Appendix A To Part 806—References
Appendix B To Part 806—Abbreviations and Acronyms
Appendix C To Part 806—Terms

Authority: 5 U.S.C. 552.

§ 806.1 Summary of revisions.

This part makes this guidance an Air Force supplement to the DoD regulation at 32 CFR part 286. It transfers responsibility for the Air Force Freedom of Information Act (FOIA) Program from the Office of the Secretary of the Air Force (SAF/AAI) to Headquarters United States Air Force (HQ USAF/SC) and Headquarters Air Force Communications and Information Center/Corporate Information Division (HQ AFCIC/ITC); contains significant changes and additions to implement the Electronic Freedom of Information Act (EFOIA) Amendments of 1996; addresses electronic records; increases time limits to 20 working days; adds procedures for multiple tracking and expedited processing of requests; changes annual report date and content; adds major command (MAJCOM) inspectors general (IG), MAJCOM Directors of Inquiries (IGQ), and wing commanders as initial denial authorities (IDAs).

§ 806.2 Applicability.

A list of Air Force MAJCOMs, field operating agencies (FOAs), and Direct Reporting Units (DRUs) is at § 806.26.

§ 806.3 Public information.

(a) *Functional requests.* Air Force elements may receive requests for government information or records from the public that do not refer to the FOIA. Often these requests are sent to a public affairs office (PAO) or a specific unit. All releases of information from Air Force records, whether the requester cites the FOIA or not, must comply with the principles of the FOIA and this part. If the requested material contains personal privacy information that the Air Force must withhold, it is particularly important to handle that ''functional'' request as a request under the FOIA and coordinate it with the appropriate FOIA office and an Air Force attorney. Regardless of the nature of the functional request, if the responding element denies the release of information from Air Force records, then control the request as a FOIA and follow FOIA denial procedures for records withheld (cite the pertinent FOIA exemption and give the requester FOIA appeal rights).

(b) HQ AFCIC/ITC will make the Air Force handbook and guide for requesting records available on the World Wide Web (WWW) from Air ForceLINK, at http://www.foia.af.mil/handbook.htm.

§ 806.4 Definitions.

(a) *Electronic reading room (ERR).* Rooms established on Internet web sites for public access to FOIA-processed (a)(2)(D) records.

(b) *FOIA request.* This includes FOIA requests made by members of Congress either on their own behalf or on behalf of one of their constituents. Process FOIA requests from members of Congress in accordance with this Air Force supplement. Air Force-affiliated requesters, to include military and civilian employees, should not use government equipment, supplies, stationery, postage, telephones, or official mail channels to make FOIA requests.

(1) Simple requests can be processed quickly with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records. Only one installation is involved and there are no outside Office of Primary Responsibility (OPRs). There are no classified or nongovernment records. No deliberative process/privileged materials are involved. The responsive records contain no (or limited) personal privacy information and do not come from a Privacy Act system of records. No time extensions are anticipated.

(2) Complex requests take substantial time and cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume. Multiple organizations must review/coordinate on requested records. Records are classified; originated with a nongovernment source; are part of the Air Force's decision-making process; or are privileged.

(c) *Government Information Locator Service (GILS).* GILS is an automated on-line card catalog of publicly accessible information. The Office of Management and Budget (OMB) Bulletin 95–01, December 7, 1994, and OMB Memorandum, February 6, 1998, mandates that all federal agencies create

a GILS record for information available to the public. The DoD GILS resides on DefenseLINK, the official DoD home page, at ''http://www.defenselink.mil/locator/index.html.''

(d) *Initial denial authority*. Only approved IDAs may deny all or parts of records. FOIA managers may: initially deny fee category claims, requests for expedited processing, and waiver or reduction of fees; review fee estimates; and sign ''no records'' responses. IDAs are the deputy chiefs of staff and chiefs of comparable offices or higher at HQ USAF and Secretary of the Air Force (SAF), and MAJCOM commanders. Deputy Chiefs of Staff and chiefs of comparable offices or higher at HQ USAF and SAF may name one additional position as denial authority. MAJCOM commanders may appoint two additional positions at the headquarters and also the wing commander at base level. MAJCOM IGs and MAJCOM Directors of Inquiries (IGQ) may act as IDAs for IG records. MAJCOM FOIA managers must notify HQ AFCIC/ITC in writing (by facsimile, e-mail, or regular mail) of IDA position titles. Send position titles only—no names. HQ AFCIC/ITC sends SAF/IGQ a copy of the correspondence designating IDA positions for IG records. When the commander changes the IDA designee position, MAJCOM FOIA managers will advise HQ AFCIC/ITC immediately. In the absence of the designated IDA, the individual filling/assuming that position acts as an IDA, however; all denial documentation must reflect the position title of the approved or designated IDA, even if in an acting capacity (for example, Acting Director of Communications and Information, Headquarters Air Combat Command).

(e) *Office of primary responsibility (OPR)*. A DoD element that either prepared, or is responsible for, records identified as responsive to a FOIA request. OPRs coordinate with the office of corollary responsibility (OCR) and FOIA managers to assist IDAs in making decisions on FOIA requests.

(f) *OCR*. A DoD element with an official interest in, and/or collateral responsibility for, the contents of records identified as responsive to a FOIA request, even though those records were either prepared by, or are the primary responsibility of, a different DoD element. OCRs coordinate with OPRs and FOIA managers to assist IDAs in making decisions on FOIA requests.

(g) *Appellate authority*. The SAF has designated the Deputy General Counsel, Fiscal, Ethics, and Civilian Personnel (SAF/GCA) as the FOIA appellate authority.

(h) *Reading room*. Any place where a member of the public may view FOIA records.

§ 806.5 Responsibilities.

(a) The Director, Communications and Information (HQ USAF/SC) has overall responsibility for the Air Force FOIA Program. The Corporate Information Division (HQ AFCIC/ITC) administers the procedures necessary to implement the Air Force FOIA Program, submits reports to the Director, Freedom of Information and Security Review (DFOISR), and provides guidance and instructions to MAJCOMs. Responsibilities of other Air Force elements follow.

(b) SAF/GCA makes final decisions on FOIA administrative appeals.

(c) Installation commanders will: Comply with FOIA electronic reading room (ERR) requirements by establishing a FOIA site on their installation public web page and making frequently requested records (FOIA-processed (a)(2)(D)) records available through links from that site, with a link to the Air Force FOIA web page at http://www.foia.af.mil. See § 806.12(c).

(d) MAJCOM commanders implement this instruction and appoint a FOIA manager, in writing. Send the name, phone number, office symbol, and e-mail address to HQ AFCIC/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

(e) Air Force attorneys review FOIA responses for legal sufficiency, provide legal advice to OPRs, disclosure authorities, IDAs, and FOIA managers, and provide written legal opinions when responsive records (or portions of responsive records) are withheld. Air Force attorneys ensure factual and legal issues raised by appellants are considered by IDAs prior to sending the FOIA appeal files to the Secretary of the Air Force's designee for final action.

(f) Disclosure authorities and IDAs apply the policies and guidance in this instruction, along with the written recommendations provided by staff elements, when considering what decisions to make on pending FOIA actions. Where any responsive records are denied, the IDA tells the requesters the nature of records or information denied, the FOIA exemption supporting the denial, the reasons the records were not released, and gives the requester the appeal procedures. In addition, on partial releases, IDAs must ensure requesters can see the placement and general length of redactions with the applicable exemption indicated. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption. When working FOIA appeal actions for the appellate authority review:

(1) IDAs grant or recommend continued denial (in full or in part) of the requester's appeal of the earlier withholding of responsive records, or adverse determination (for example, IDAs may release some or all of the previously denied documents).

(2) IDAs reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination made by the FOIA manager.

(3) When an IDA denies any appellate action sought by a FOIA requester, the IDA, or MAJCOM FOIA manager (for no record, fee, fee estimates, or fee category appeals) will indicate in writing that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

(g) OPRs:

(1) Coordinate the release or denial of records requested under the FOIA with OCRs, FOIA offices, and with Air Force attorneys on proposed denials.

(2) Provide requested records. Indicate withheld parts of records annotated with FOIA exemption. Ensure requesters can see the placement and general length of redactions. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption.

(3) Provide written recommendations to the disclosure authority to determine whether or not to release records, and act as declassification authority when appropriate.

(4) Make frequently requested records (FOIA-processed (a)(2)(D)) available to the public in the FOIA ERR via the Internet. As required by AFIs 33–129, Transmission of Information Via the Internet, and 35–205, Air Force Security and Policy Review Program, OPRs request clearance of these records with the PAO before posting on the WWW, and coordinate with JA and FOIA office prior to posting. The FOIA manager, in coordination with the functional OPR or the owner of the records, will determine qualifying records, after coordination with any interested OCRs.

(5) Complete the required GILS core record for each FOIA-processed (a)(2)(D) record.

(6) Manage ERR records posted to the installation public web page by updating or removing them when no longer needed. Software for tracking number of hits may assist in this effort.

(h) FOIA managers:

(1) Ensure administrative correctness of all FOIA actions processed.

(2) Control and process FOIA requests.

(3) Obtain recommendations from the OPR for records.

(4) Prepare or coordinate on all proposed replies to the requester. FOIA managers may sign replies to requesters when disclosure authorities approve the total release of records. If the MAJCOM part directs the OPR to prepare the reply, the OPR will coordinate their reply with the FOIA office.

(5) Make determinations as to whether or not the nature of requests are simple or complex where multitrack FOIA request processing queues exist.

(6) Approve or initially deny any requests for expedited processing.

(7) Provide interim responses to requesters, as required.

(8) Provide a reading room for inspecting and copying records.

(9) Provide training.

(10) Review publications for compliance with this part.

(11) Conduct periodic program reviews.

(12) Approve or deny initial fee waiver requests.

(13) Make the initial decision on chargeable fees.

(14) Collect fees.

(15) Send extension notices.

(16) Submit reports.

(17) Sign ''no record'' responses.

(18) Provide the requester the basis for any adverse determination (i.e., no records, fee denials, fee category determinations, etc.) in enough detail to permit the requester to make a decision whether or not to appeal the actions taken, and provide the requester with appeal procedures.

(i) On appeals, FOIA managers:

(1) Reassess a fee category claim by a requester, overturning or confirming the initial determination.

(2) Reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination.

(3) Reassess a request for a waiver or reduction of fees, overturning or confirming the initial determination.

(4) Review a fee estimate, overturning or confirming the initial determination.

(5) Confirm that no records were located in response to a request.

(j) The base FOIA manager acts as the FOIA focal point for the FOIA site on the installation web page.

(k) When any appellate action sought by a FOIA requester is denied by an IDA or FOIA manager for authorized actions, the IDA or FOIA manager will indicate, in writing, that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

§ 806.6 Prompt action on requests.

(a) Examples of letters to FOIA requesters (e.g., response determinations and interim responses) are included in § 806.27.

(b) Multitrack processing. (1) Examples of letters to FOIA requesters (e.g., letters to individuals who have had their FOIA request placed in the complex track) are included in § 806.27.

(2) Simple requests can be processed quickly, with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records, only one installation is involved, there are no outside OPRs, no classified or nongovernment records, no deliberative process/privileged materials are involved, records contain no (or limited) personal privacy information/did not come from Privacy Act systems of records concerning other individuals, or time extensions not anticipated.

(c) Complex requests will take substantial time, will cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume, multiple organizations must review/coordinate on records, records are classified, records originated with a nongovernment source, records were part of the Air Force's decision-making process or are privileged.

(d) Expedited processing. Examples of letters to individuals whose FOIA requests and/or appeals were not expedited are included in § 806.27.

§ 806.7 Use of exemptions.

(a) A listing of some AFIs that provide guidance on special disclosure procedures for certain types of records is provided in § 806.28. Refer to those instructions for specific disclosure procedures. Remember, the only reason to deny a request is a FOIA exemption.

(b) Refer requests from foreign government officials that do not cite the FOIA to your foreign disclosure office and notify the requester.

(c) If you have a non-U.S. Government record, determine if you need to consult with the record's originator before releasing it (see § 806.9 and § 806.15(c)). This includes records created by foreign governments and organizations such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). You may need to coordinate release of foreign government records with either the U.S. Department of State or with the specific foreign embassy, directly through the MAJCOM FOIA office. Coordinate release or denial of letters of offer and acceptance (LOA) with SAF/IA through 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington DC 20330–1000.

§ 806.8 Description of requested record.

Air Force elements must make reasonable efforts to find the records described in FOIA requests. Reasonable efforts means searching all activities and locations most likely to have the records, and includes staged or retired records, as well as complete and thorough searches of relevant electronic records, such as databases, word processing, and electronic mail files.

§ 806.9 Referrals.

(a) Send all referrals through the FOIA office. The receiving FOIA office must agree to accept the referral before transfer. The FOIA office will provide the name, phone number, mailing address, and e-mail address of both the FOIA office point of contact and the record OPR point of contact in their referral letter. Include the requested record. If the requested records are massive, then provide a description of them. Referrals to, or consultations with, DFOISR are accomplished from the MAJCOM level. Section 806.27 has an example of a referral memo.

(b) In some cases, requested records are available from the GPO and NTIS, 5285 Port Royal Road, Springfield VA 22161. These organizations offer certain records for sale to the public. Current standard releasable Air Force publications are available electronically on the WWW at http://afpubs.hq.af.mil/. For requesters without electronic access, NTIS has paper copies for sale. Give requesters the web address or NTIS address when appropriate. However, if the requester prefers to pursue the FOIA process, consult with HQ AFCIC/ITC through the MAJCOM. Refer FOIA requests for Air Force publications that are classified, FOUO, rescinded, or superseded to the OPR through the appropriate FOIA office.

§ 806.10 Records management.

Keep records that were fully released for 2 years and denied records for 6 years. Include in the 6-year record file copies of records or parts of records that

were released in response to the same request. Refer to Air Force Manual (AFMAN) 37–139, Records Disposition Schedule (converting to AFMAN 33–339, see § 806.9(b)). The functional OPR or FOIA office may keep the records released or denied. The FOIA office keeps the FOIA case file for each request. The FOIA case file consists of: the initial request; tasking to OPRs; OPR's reply; memoranda for record (MFR) of phone calls or other actions related to the FOIA request; DD Forms 2086, Record of Freedom of Information (FOI) Processing Cost, or 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data; final response; and any of the following, if applicable: extension letter; legal opinions; submitter notification letters and replies; the appeal and required attachments (except for the released or denied records if maintained by the OPR); and all other correspondence to and from the requester.

§ 806.11 FOIA reading rooms.

Each FOIA office will arrange for a reading room where the public may inspect releasable records. You do not need to co-locate the reading room with the FOIA office. The FOIA does not require creation of a reading room dedicated exclusively to this purpose. A ''reading room'' is any location where a requester may review records. For FOIA-processed (a)(3) records, if requesters meet the criteria for search and review costs, they must be paid before inspecting records. Assess reproduction costs at the time of inspection, if appropriate.

§ 806.12 Record availability.

(a) HQ AFCIC/ITC will make the traditional FOIA-processed (a)(2) materials (5 U.S.C. 552(a)(2)(A), (B), and (C)) available to the public. Each Air Force activity must make 5 U.S.C. 552(a)(2)(D) records (''FOIA-processed (a)(2)(D) records''—records which they determine will, or have become, the subject of frequent or subsequent requests) available to the public in a reading room in hard copy and electronically by posting it to their appropriate web site. There is no requirement to make all FOIA-released records available electronically. The FOIA manager, in coordination with the functional OPR, or the owner of the records, determines qualifying records, after coordination with any interested OCRs. As required by AFIs 33–129 and 35–205, OPRs request clearance of these records with the PAO before posting on the WWW.

(b) Normally, if the FOIA office or OPR receives, or anticipates receiving, five or more requests for the same record in a quarter, they will consider it a frequently requested record (FOIA-processed (a)(2)(D) record) and make it publicly available in hard copy and electronically as outlined in § 806.12(a). OPRs may elect to make other records publicly available if they receive, or expect to receive, less than five requests a quarter. The purpose is to make records available in an ERR to potential future FOIA requesters instead of waiting to receive a FOIA request, and reduce the number of multiple FOIA requests for the same records requiring separate responses. In making these determinations, recognize there are some situations in which a certain type of record becomes the subject of simultaneous FOIA requests from all interested parties and then ceases to be of interest. Activities may typically receive a ''flurry'' of FOIA requests for contract records immediately after a contract is awarded, but do not receive any subsequent requests for such bulky records after that point. In some cases, activities may decide that placing records in the ERR would not serve the statutory purpose of ''diverting some potential FOIA requests for previously released records.'' The following types of records should be considered for inclusion in the ERR (excluding individuals assigned to overseas, sensitive, and routinely deployable units): organizational charts and limited staff directories; lists of personnel reassigned with gaining base; MAJCOM FOIA supplements; lists of International Merchant Purchase Authority Card (IMPAC) card holders. Do not post lists of e-mail addresses.

(c) GILS. Each activity that posts FOIA-processed (a)(2)(D) records (records which they determine will, or have become, the subject of frequent or subsequent requests) must create a GILS record for each FOIA-processed (a)(2)(D) record and post it to DefenseLINK. The OPR prepares the GILS record. You can complete and submit a GILS record on-line using a web browser. Instructions for completing the GILS record, and an on-line form are at http://www.defenselink.mil/locator/index.html. Follow the steps listed on the web page. The GILS site on DefenseLINK will serve as the central index of Air Force FOIA-processed (a)(2)(D) records.

(d) In addition, installations will post a list, or index, of locally produced FOIA-processed (a)(2)(D) records on their web page at their FOIA site. Each listing will point or link to the particular record. In addition, MAJCOMs may choose to post their own index of MAJCOM specific FOIA-processed (a)(2)(D) records to their appropriate web site. Installation web pages will include the following phrase (or similar words) on their FOIA site if they do not have any frequently requested FOIA records: ''There are no frequently requested FOIA records to post at this time.'' Include the following statement, or a similar one, on the installation web page with the records: ''Some records are released to the public under the FOIA, and may therefore reflect deletion of some information in accordance with the FOIA's nine statutory exemptions. A consolidated list of such records is on DefenseLINK.'' Link the word ''DefenseLINK'' to www.defenselink.mil/locator/fpr__index.html. Qualifying releasable records with exempt information redacted must show on the record the amount of information withheld and the exemption reason (for example, (b)(6)). Activities with such records should provide the public an index and explanation of the FOIA exemptions. All installation FOIA pages will include a link to the Air Force page.

(e) FOIA web pages should be clearly accessed from the main installation page, either by a direct link to ''FOIA'' or ''Freedom of Information Act'' from the main page, or found under a logical heading such as ''Library'' or ''Sites.''

§ 806.13 ''5 U.S.C. 552(a)(2)'' materials.

The GILS records on DefenseLINK will serve as the index for 5 U.S.C. 552(a)(2)(D) materials.

§ 806.14 Other materials.

HQ AFCIC/ITC makes the appropriate FOIA-processed (a)(1) materials available for the Air Force.

§ 806.15 FOIA exemptions.

(a) *Exemption number 1.* When a requester seeks records that are classified, or should be classified, only an initial classification authority, or a declassification authority, can make final determinations with respect to classification issues. The fact that a record is marked with a security classification is not enough to support withholding the document; make sure it is ''properly and currently classified.'' Review the record paragraph by paragraph for releasable information. Review declassified and unclassified parts before release to see if they are exempt by other exemptions. Before releasing a reviewed and declassified document, draw a single black line through all the classification markings so they are still legible and stamp the document unclassified. If the requested records are ''properly and currently classified,'' and the Air Force withholds

from release under FOIA exemption (b)(1), and the requester appeals the withholding, include a written statement from an initial classification authority or declassification authority certifying the data was properly classified originally and that it remains properly classified per Executive Order. Examples of initial classification and declassification authority statements are included in § 806.27. Guidance on document declassification reviews is in AFI 31–401, Managing the Information Security Program, and DoD 5200.1–R, Information Security Program, January 1997.

(b) *Exemption number 3.* HQ AFCIC/ITC will provide the current FOIA-processed (b)(3) statutes list to the MAJCOMs.

(c) *Exemption number 4.* The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination of whether FOIA exemption (b)(4) applies. (See § 806.20(a) and § 806.31). Due to a change to Title 48 CFR, Federal Acquisition Regulations System, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after January 1. 1998. For solicitations issued before January 1, 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 U.S.C. 2305(g), Prohibition on Release of Contractor Proposals).

(d) *Exemption number 5.* (1) Attorney-client records could include, e.g., when a commander expresses concerns in confidence to his or her judge advocate and asks for a legal opinion. The legal opinion and everything the commander tells the judge advocate in confidence qualify under this privilege. Unlike deliberative process privilege, both facts and opinions qualify under the attorney work product or attorney-client privilege. Attorney work product records are records an attorney prepares, or supervises the preparation of, in contemplating or preparing for administrative proceedings or litigation.

(2) Based on court decisions in FOIA litigation, which led to the release of results of personnel surveys, FOIA managers and IDAs should get advice from an Air Force attorney before withholding survey results under FOIA exemption (b)(5).

(e) *Exemption number 6.* (1) AFI 37–132, Air Force Privacy Act Program (will convert to AFI 33–332) provides guidance on collecting and safeguarding social security numbers (SSN). It states: ''SSNs are personal and unique to each individual. Protect them as FOUO. Do not disclose them to anyone without an official need to know.'' Before releasing an Air Force record to a FOIA requester, delete SSNs that belong to anyone other than the requester. In any subsequent FOIA release to a different requester of those same records, make sure SSNs are deleted. When feasible, notify Air Force employees when someone submits a FOIA request for information about them. The notification letter should include a brief description of the records requested. Also include a statement that only releasable records will be provided and we will protect personal information as required by the FOIA and Privacy laws.

(2) Personal information may not be posted at publicly accessible DoD web sites unless to do so is clearly authorized by law and implementing regulation and policy. Personal information should not be posted at nonpublicly accessible web sites unless it is mission essential and appropriate safeguards have been established. See also AFIs 33–129 and 35–205.

(3) Withhold names and duty addresses of personnel serving overseas or in sensitive or routinely deployable units. Routinely deployable units normally leave their permanent home stations on a periodic or rotating basis for peacetime operations or for scheduled training exercises conducted outside the United States or United States territories. Units based in the United States for a long time, such as those in extensive training or maintenance activities, do not qualify during that period. Units designated for deployment on contingency plans not yet executed and units that seldom leave the United States or United States territories (*e.g.*, annually or semiannually) are not routinely deployable units. However, units alerted for deployment outside the United States or United States territories during actual execution of a contingency plan or in support of a crisis operation qualify. The way the Air Force deploys units makes it difficult to determine when a unit that has part of its personnel deployed becomes eligible for denial. The Air Force may consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of its personnel have been either alerted or actually deployed. In this context, alerted means that a unit has received an official written warning of an impending operational mission outside the United States or United States territories. Sensitive units are those involved in special activities or classified missions, including, for example, intelligence-gathering units that collect, handle, dispose of, or store classified information and materials, as well as units that train or advise foreign personnel.

(i) Each MAJCOM and FOA will establish a system and assign OPRs to identify United States-based units in their command qualifying for the ''sensitive or routinely deployable unit'' designation, under this exemption. Appropriate OPRs could include directors of operations, plans and programs, and personnel.

(ii) MAJCOM FOIA managers will ensure the list of sensitive and routinely deployable units is reviewed in January and July, and will follow that review with a memo to the Air Force Personnel Center (HQ AFPC/MSIMD), 550 C Street West, Suite 48, Randolph AFB, TX 78150–4750, either validating the current list or providing a revised listing based on the current status of deployed units at that time. This listing is in American Standard Code for Information Interchange (ASCII) format on a 3½'' (double-sided, high-density) diskette, which contains the unit's eight-position personnel accounting symbol (PAS) code, with one PAS code per line (record) (8-byte record). The MAJCOM FOIA manager will send an electronic copy of the list of nonreleasable units to HQ AFPC/MSIMD which is included in the personnel data system. The MAJCOM and HQ AFPC FOIA offices will use it to determine releasable lists of names and duty addresses. This reporting requirement is exempt from licensing with a reports control symbol (RCS) in accordance with AFI 37–124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33–324).

(f) *Exemption number 7.* Guidance provided in § 806.15(e)(1) also applies to SSNs in records compiled for law enforcement purposes. Do not disclose SSNs to anyone without an official need to know.

§ 806.16 For official use only.

(a) Markings. Record owners may also add the following sentence to the statement above: ''(Further distribution is prohibited without the approval of (owner's organization, office symbol, phone).)''

(b) Dissemination and transmission. (1) When deciding whether to send FOUO records over facsimile equipment, balance the sensitivity of the

records against the risk of disclosure. When faxing, use cover sheets to indicate FOUO attachments (*i.e.,* AF Form 3227, Privacy Act Cover Sheet, for Privacy Act information). Consider the location of sending and receiving machines and ensure authorized personnel are available to receive FOUO information as soon as it is transmitted.

(2) For Privacy Act records, refer to AFI 33–332 for specific disclosure rules. For releases to GAO and Congress, refer to AFI 90–401, Air Force Relations With Congress and AFI 65–401, Relations With the General Accounting Office. See § 806.9(b) for availability.

(c) Termination, disposal and unauthorized disclosures. You may recycle FOUO material. Safeguard the FOUO documents or information to prevent unauthorized disclosure until recycling. Recycling contracts must include specific responsibilities and requirements on protecting and destroying FOUO and Privacy Act materials.

§ 806.17 Release and processing procedures.

(a) Individuals seeking Air Force information should address requests to an address listed in § 806.26. MAJCOM FOIA office phone numbers and mailing addresses are available on the Air Force FOIA Web Page at http://www.foia.af.mil.

(1) A list of Air Force FOIA processing steps, from receipt of the request through the final disposition of an administrative appeal is at § 806.29, which also includes guidance on preparing and processing an Air Force FOIA appeal package.

(2) Air Force host tenant relationships. The Air Force host base FOIA manager may log, process, and report FOIA requests for Air Force tenant units. In such cases, the host base FOIA office refers all recommended denials and ''no records'' appeals to the Air Force tenant MAJCOM FOIA manager. This does not apply to the Air National Guard (ANG), Air Force Reserves, or to disclosure authorities for specialized records.

(b) Use FOIA procedures in this part to process any congressional request citing FOIA, or covering a constituent letter citing FOIA. This does not apply to requests from a Congressional Committee or Subcommittee Chair on behalf of the committee or subcommittee.

§ 806.18 Initial determinations.

(a) Disclosure authorities make final decisions on providing releasable records within the time limits and provide recommendations to the IDA on proposed denials and partial denials after coordination with the appropriate FOIA and JA office. Normally, disclosure authorities are division chiefs or higher at Air Staff level. MAJCOMs will designate their disclosure authority levels. The level should be high enough so a responsible authority makes the disclosure according to the policies outlined in this part. At out sourced units or functions, the disclosure authority must be a government official. Contractors who are functional OPRs for official government records are not authorized to make the decision to disclose government records.

(b) On receipt, Air Force FOIA offices will promptly inform Air Force PAOs of all FOIA requests that are potentially newsworthy, or that are submitted by news media requesters. FOIA offices will coordinate final replies for such cases with public affairs.

§ 806.19 Reasonably segregable portions.

Delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to ''read through the marking.'' Examples of records with deletions of exempted data are in § 806.30.

§ 806.20 Records of non-U.S. government source.

(a) The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination as to whether FOIA exemption (b)(4) applies. See § 806.15(c) and § 806.31. Due to a change to 48 CFR, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after January 1, 1998. For solicitations issued before January 1, 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 U.S.C. 2305(g)).

(b) Department of State involvement. Air Force FOIA managers will notify their MAJCOM (or equivalent) FOIA office, in writing, via fax or e-mail when the Department of State becomes involved in any Air Force FOIA actions. The MAJCOM FOIA office will provide 11 CS/SCSR, via fax or e-mail, a summary of the issues involved, and the name, phone number, mailing address and e-mail address of: their own FOIA office point of contact; the Air Force record OPR point of contact, the DoD component FOIA office point of contact (if any), and the Department of State point of contact. 11 CS/SCSR will inform SAF/IA of any State Department involvement in Air Force FOIA actions. (See § 806.7(b).) An example of a memo advising 11 CS/SCSR of State Department involvement in an Air Force FOIA action is provided in § 806.27.

§ 806.21 Appeals.

(a) FOIA requesters seeking Air Force records must address appeals to the Office of the Secretary of the Air Force, through the FOIA office of the IDA that denied the request. Requesters should attach a copy of the denial letter to their appeal and give reasons for appealing. Air Force IDAs may reconsider any prior denials and may grant all or part of a requester's appeal. When any appellate action sought by a FOIA requester is denied by an IDA, the IDA will include a statement that the issues raised in the appeal were considered and rejected (in full or in part) in any file sent to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeals to IDA decisions at the wing level through the MAJCOM FOIA office for sending to the Secretary of the Air Force's designated appellate authority, SAF/GCA (and Air Force Legal Services Agency (AFLSA/JACL)). (See §§ 806.4(g), 806.5(b), and § 806.5(k).) Additional steps are required prior to sending an appeal file.

(1) MAJCOM FOIA offices and record OPRs are responsible for ensuring adequate preparation of the FOIA appeal package for reconsideration by the IDA. FOIA offices and records OPRs will coordinate with Air Force attorneys, who will provide written opinions on substantive issues raised in the appeal.

(2) If a requester appeals an Air Force ''no records'' determination, Air Force elements must search again or verify the adequacy of their first search. The package must include documents that show the Air Force element systematically tried to find responsive records. Tell, for example, what areas or offices were searched and how the search was conducted—manually, by computer, by telephone, and so forth. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits are required to support the adequacy of any searches conducted.

(3) FOIA requesters seeking to appeal denials involving Office of Personnel Management's controlled civilian personnel records must appeal to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

(4) If a requester appeals a denial of a fee waiver, fee estimate, or fee reduction request, FOIA offices and record OPRs must account for actual and estimated costs of processing a request, and will include copies of the DD Forms 2086 or 2086–1 in the appeal package.

(5) When any appellate action sought by a FOIA requester is denied by an IDA, prepare the FOIA appeal package as specified in § 806.29, and then the MAJCOM FOIA office forwards the appeal file to the Secretary of the Air Force's designated appellate authority, SAF/GCA (through AFLSA/JACL), for a final administrative determination.

(b) Air Force activities will process appeal actions expeditiously to ensure they reach the Office of the Secretary of the Air Force in a timely manner.

§ 806.22 Time limits.

Any FOIA appeals received after the 60-day time limit are not processed, unless the requester provides adequate justification for failing to comply with the time limit. If a late appeal is received, and there is no adequate justification for failing to comply with the time limit, the FOIA office will advise the FOIA requester their appeal has been closed. An example of a closure letter is included in § 806.27.

§ 806.23 Delay in responding to an appeal.

For an appeal in process and not yet forwarded to AFLSA/JACL, the MAJCOM FOIA office is responsible for advising the requester of the status of the appeal. For an appeal in process at AFLSA/JACL, that office will advise the requester regarding status of the appeal.

§ 806.24 Fee restrictions.

For FOIA purposes, Air Force activities will consider the cost of collecting a fee to be $15 and will not assess requesters' fees for any amount less than $15.

§ 806.25 Annual report.

(a) MAJCOM FOIA managers and AFLSA/JACL send a consolidated report for the fiscal year on DD Form 2564, Annual Report Freedom of Information Act, to HQ AFCIC/ITC by October 30 via regular mail, e-mail, or facsimile. AFLSA/JACL will prepare the appeals and litigation costs sections of the report. HQ AFCIC/ITC will make the Air Force report available on the WWW.

(b) Total requests processed. ''Processed'' includes responses that give an estimated cost for providing the records, even if the requester has not paid.

(c) Denied in full. Do not report ''no record'' responses as denials.

(d) Other reasons.

(1) *Referrals.* Also include referrals within Air Force in this category.

(2) *Not an agency record.* The ''not an agency record'' other reason category only applies to requests for: objects or articles such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence; anything that is not a tangible or documentary record such as an individual's memory or oral communication; and personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use. This category does not include ''no record'' responses.

(e) Other. The ''Other (Specify)'' block must contain the reason with the total number for the reason. For example: ''FOIA request had no return address–4.''

(f) 5 U.S.C. 552(b)(3) statutes invoked on initial determinations. A corresponding statute is required for each instance entered in the Exemption 3 block. List the statute by number, not title. For any statute on the report that is not on DoD's list of commonly used 5 U.S.C. 552(b)(3) statutes, attach a copy of the pertinent page of the statute that states information must be withheld from public disclosure. HQ AFCIC/ITC makes the DoD list available to FOIA managers electronically. Statutes on the DoD list with an asterisk indicate they are valid 5 U.S.C. 552(b)(3) statutes from litigation. Do not enter any of the following as 5 U.S.C. 552(b)(3) statutes:

5 U.S.C. 552
5 U.S.C. 552a
28 U.S.C. 1498
17 U.S.C. 101
18 U.S.C. 1905.

(g) Appeal determinations. Enter the total number of FOIA appeals received and total number of FOIA appeals completed during the fiscal year.

(h) Average. Air Force will use the ''median age'' and will not collect or report averages.

(i) Number of initial requests received during the fiscal year. This number includes open and closed cases.

(j) Total number of initial requests. ''Processed'' includes responses which give an estimated cost for providing the records, even if the requester has not paid.

(k) Total program cost. This figure includes all costs from the DD Forms 2086 and 2086–1, as well as personnel costs for individuals primarily involved in administering the FOIA program. To figure personnel costs, multiply the annual salary of each person by the percentage of time spent on FOIA.

(l) MAJCOMs and bases do not include the 25 percent. HQ AFCIC/ITC will add to the final Air Force report to DoD.

(m) Authentication. MAJCOM SCs will sign as approving official (or two-letter functional equivalent for FOIA offices in other functional areas).

§ 806.26 Addressing FOIA requests.

(a) FOIA requests concerning Air National Guard Inspector General records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000.

(b) Addressing Air Force Freedom of Information Act requests. The Department of the Air Force, a component of the DoD, includes the Office of the Secretary of the Air Force, the Chief of Staff of the Air Force (who is supported by Headquarters Air Force or ''Air Staff'' elements), the MAJCOMs, the FOAs, and DRUs. This section lists the FOIA office addresses. A selected subordinate unit is also included in this section. Realignment of Air Force elements is frequent; addresses listed below are subject to change.

(c) The Department of the Air Force does not have a central repository for Air Force records. FOIA requests are addressed to the Air Force element that has custody of the record desired. In answering inquiries regarding FOIA requests, Air Force personnel will assist requesters in determining the correct Air Force element to address their requests. If there is uncertainty as to the ownership of the record desired, refer the requester to the Air Force element that is most likely to have the record. Two organizations that include Air Force elements, and hold some Air Force-related records, are also included in the addresses listed below.

(d) MAJCOMs:

(1) Air Combat Command (ACC): HQ ACC/SCTC, 230 East Flight Line Road, Langley AFB VA 23665–2781.
(2) Air Education and Training Command (AETC): HQ AETC/SCTS, 61 Main Circle Suite 2, Randolph AFB TX 78150–4545.
(3) Air Force Materiel Command (AFMC): HQ AFMC/SCDP, 4225 Logistics Avenue, Suite 6, Wright-Patterson AFB, OH 45433–5745.
(4) Air Force Reserve Command (AFRC): HQ AFRC/SCSM, 155 2nd Street, Robins AFB, GA 31098–1635.
(5) Air Force Special Operations Command (AFSOC): HQ AFSOC/SCMN, 100 Bartley Street, Suite 201, Hurlburt Field, FL 32544–5273.
(6) Air Force Space Command (AFSPC): HQ AFSPC/SCMA, 150 Vandenberg

Street, Suite 1105, Peterson AFB, CO 80914–4400.

(7) Air Mobility Command (AMC): HQ AMC/SCYNR, 203 West Losey Street, Room 3180, Scott AFB, IL 62225–5223.

(8) Pacific Air Forces (PACAF): HQ PACAF/SCT, 25 E Street, Suite C220, Hickam AFB, HI 96853–5409.

(9) United States Air Forces in Europe (USAFE): HQ USAFE/SCMI, Unit 3050, Box 125, APO AE 09094–0125.

(e) FOAs:

(1) Air Force Audit Agency (AFAA): HQ AFAA/IMP, 1126 Air Force Pentagon, Washington, DC 20330–1126.

(2) Air Force Base Conversion Agency (AFBCA): AFBCA/ESA, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

(3) Air Force Center for Environmental Excellence (AFCEE): HQ AFCEE/MSI, 3207 North Road, Brooks AFB, TX 78235–5363.

(4) Air Force Civil Engineering Support Agency (AFCESA): HQ AFCESA/IMD, 139 Barnes Drive Suite 1, Tyndall AFB, FL 32403–5319.

(5) Air Force Historical Research Agency (AFHRA): AFHRA/RSA, 600 Chennault Circle, Maxwell AFB, AL 36112–6424.

(6) Air Force Inspection Agency (AFIA): (Shared FOIA office/function, AFIA and Air Force Safety Agency) AFSA/JAR, 9700 Avenue G SE, Suite 236B, Kirtland AFB, NM 87117–5670.

(7) Air Force Medical Support Agency (AFMSA): AFMSA/CCEA, 2510 Kennedy Circle, Suite 208, Brooks AFB, TX 78235–5121.

(8) Air Force News Agency (AFNEWS): HQ AFNEWS/SCB, 203 Norton Street, Kelly AFB, TX 78241–6105.

(9) Air Force Office of Special Investigations (AFOSI): HQ AFOSI/SCR, P. O. Box 2218, Waldorf, MD 20604–2218.

(10) Air Force Personnel Center (AFPC): HQ AFPC/MSIMD, 550 C Street West, Suite 48, Randolph AFB, TX 78150–4750.

(11) Air Force Center for Quality and Innovation (AFCQMI): AFCQMI/CSP, 550 E Street East, Randolph AFB, TX 78150–4451.

(12) Air Force Safety Agency (AFSA): (Shared FOIA office/function, AFIA, and AFSA) AFSA/JARF, 9700 Avenue G SE, Suite 236B, Kirtland AFB, NM 87117–5670.

(13) Air Force Security Forces Center (AFSFC): AFSFC/CCQ 1720 Patrick Street, Lackland AFB, TX 78236–5226.

(14) Air Force Services Agency (AFSVA): AFSVA/SVSR, 9504 1H–35 North, Suite 250, San Antonio, TX 78233–6635.

(15) Air Force Technical Applications Center (AFTAC): AFTAC/LSCS, 1030 South Highway, Suite A1A, Patrick AFB, FL 32925–6001.

(16) Air Intelligence Agency (AIA): AIA/DOOI, 102 Hall Boulevard, Suite 229, San Antonio, TX 78243–7029.

(17) Air Reserve Personnel Center (ARPC): ARPC/SCS, 6760 East Irvington Place, #6600, Denver, CO 80280–6600.

(18) Air Force Weather Agency (AFWA): HQ AFWA/SCI, 106 Peacekeeper Drive Suite 2N3, Offutt AFB, NE 68113–4039.

(19) Air Force History Support Office (AFHSO): AFHSO, 500 Duncan Avenue Box 94, Bolling AFB, DC 20332–1111.

(f) DRUs:

(1) Air Force Operational Test and Evaluation Center (AFOTEC): AFOTEC/SCM, 8500 Gibson Boulevard SE, Kirtland AFB, NM 87117–5558.

(2) 11th Wing: 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000 (if a person is unsure where to send a FOIA request for Air Force records, or is seeking records from the Office of the Secretary of the Air Force, or other Headquarters Air Force records, use this address).

(3) United States Air Force Academy (USAFA): 10 CS/SCBD, 2304 Cadet Drive, Suite 232, USAFA, CO 80840–5060.

(g) Selected subordinate units: Air Force Communications Agency (AFCA): HQ AFCA/CCQI, 203 West Losey Street, Room 1022, Scott AFB, IL 62225–5203.

(h) Organizations which include air force elements:

(1) Army and Air Force Exchange Service (AAFES): HQ AAFES/GC–E, P.O. Box 660202, Dallas, TX 75266–0202.

(2) National Guard Bureau (NGB)/Air National Guard: NGB–AD, 2500 Army Pentagon, Washington, DC 20310–2500. (FOIA requests concerning Air National Guard IG records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000.)

§ 806.27 Samples of Air Force FOIA processing documents.

(a) This section includes suggested language in paragraph format that tracks Air Force and DoD FOIA guidance. The rest of the body of letters and memorandums should comply with Air Force administrative guidance. Each MAJCOM may elect to prepare their own verbiage to meet their specific needs, so long as FOIA processing actions are consistent with guidance in DoD 5400.7–R and this part. In this section, language in parentheses is for explanatory purposes only. Do not include any of the parenthetical language of this section in your FOIA correspondence. When optional language must be selected, the optional language will be presented within parentheses. Use only the portions that apply to the specific request or response.

(b) Initial receipt of Freedom of Information Act request.

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). We will provide you our release determination by (enter date that is 20 workdays from date you received the request). (Based on our initial review, we believe we cannot process your request within 20 workdays.) (If ''cannot'' is used, add appropriate explanation; examples follow.) Please contact (name and commercial telephone number) if you have any questions and refer to case number #######.

(c) Interim response:

Your request will be delayed because: all or part of the responsive records are not located at this installation; (and/or) Processing this FOIA request will require us to collect and review a substantial number of records (and/or) Other Air Force activities or other agencies (if applicable) to include the submitter of the information, need to be involved in deciding whether or not to release the responsive records. We expect to reply to your request not later than (give a date that is not more than 30 workdays from the initial receipt of the request); (or) If processing the FOIA request will take more than the allowed time limits to respond). We find we are unable to meet the time limits imposed by the FOIA in this instance because (tell the requester the reason for the delay) (example: the records are classified and must be reviewed for possible declassification by other activities or agencies). We anticipate completing your request by (date).

(When charging fees is appropriate.) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. Based on the information in your request, we have determined your fee category is (commercial/educational or noncommercial scientific institution or news media/all others). As a result, you (if commercial category) are required to pay all document search, review and duplication costs over $15.00. (or) As a result, you (if educational or noncommercial scientific institution or news media) will be provided the first 100 pages free of charge; you are required to pay any duplication costs over and above those amounts. (or) As a result, you will be provided the first 2 hours of search time and the first 100 pages free of charge; you are required to pay any search and duplication costs over and above those amounts.

(d) Request for a more specific description:

Your request does not sufficiently describe the desired records. The FOIA applies to existing Air Force records; without more specific information from you, we cannot

identify what documents might be responsive to your request. Please give us whatever additional details you may have on the Air Force records you want. Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number and dates it covered? Our address is (include name and complete mailing address), our fax number is (give fax number), our e-mail address is (optional—give complete e-mail address). Based on the original request you sent us, we are unable to respond.

(e) Single letter acknowledging receipt of request and giving final response. (If you can complete a FOIA request within the statutory 20-workday processing period, Air Force elements may elect to send a single letter to the requester, along with responsive records which are released to the requester in full).

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). A copy (or) Copies of (describe the record(s) being released) (is/are) releasable and (is/are) attached.

(f) Collection of fees:

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category) fee category. In your case, we have assessed a charge of $____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.) Please make your check payable to (appropriate payee) and send it to (give your complete mailing address) by (date 30 days after the letter is signed). (or) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category); however, in this case, we have waived collecting fees.

(g) Multitrack processing letters to FOIA requesters. (When using the multitrack FOIA processing system, determine which of the following paragraphs to include in your letters to the requester. To the extent it may apply, include language from paragraph 2 of the sample. If a requester asks for expedited processing, answer carefully if you decide not to provide expedited processing, because requesters may appeal denial of their request for expedited processing. Advise requesters placed into the complex track in writing how they can simplify their request to qualify for the simple track.)

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). Because our organization has a significant number of pending FOIA requests, which prevents us from making a response determination within 20 workdays, we have instituted multitrack processing of requests. Based on the information you provided, we have placed your request in the (simple or complex) track. We have assigned number ##### to identify your request; should you need to contact us about your request, please write or call (name and telephone) and use this number to assist us in responding more promptly.

Based on our current backlog, we expect to respond to your request not later than (give an estimated date). Our policy is to process requests within their respective tracks in the order in which we receive them. We do process each FOIA request as quickly as we can.

(h) If the request is placed in the complex track:

In your case, processing your request is complex because (give basic reasons this is a complex case: request was vague or complicated; the records sought are voluminous; multiple organizations will have to work on this request; records are classified; responsive records came from another command/another service/a nongovernment source; responsive records were part of the Air Force's decision-making process, and the prerelease review will require policy determinations from different Air Force elements; records describe law enforcement activities; records involve foreign policy issues; due to the nature of your request and/or the nature of our computer system, responding to your request or providing a response in the electronic format you requested will be technically complex, etc.). Simplifying your request might permit quicker processing in the following ways: (describe ways the search could be narrowed to fewer records, or ways policy issues could be avoided, etc.) Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number? Please give us whatever additional details you may have on the Air Force records you are seeking, so we can attempt to streamline the processing of your request. Our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (optional—give complete e-mail address).

(i) If the requester asks that you expedite their request:

Because individuals receiving expedited processing may receive a response before other earlier requesters, there are administrative requirements you must meet before we can expedite a request. In your request, you asked that we expedite processing. In order for us to expedite a request, the requester must provide a statement certifying the reasons supporting their request are true and correct to the best of their knowledge.

In the second category, ''urgently needed'' means the information itself has a particular value that it will lose if it is not disseminated quickly. Ordinarily this means the information concerns a breaking news story of general public interest. Historic information, or information sought for litigation or commercial activities usually would not qualify for expedited processing in the second category. Also, the fact that a news organization has an internal broadcast or publication deadline, so long as the deadline was unrelated to the nature of the information itself (for example, the information was not a breaking news story of general public interest) would not make the information ''urgently needed.''

In this case, we have determined your FOIA request (will/will not) receive expedited processing. We came to this conclusion because you (did/did not) demonstrate you need the information because failure to obtain the records on an expedited basis (could or could not) reasonably expect to pose an imminent threat to life or physical safety of an individual (or) the information (is or is not) urgently needed in order to inform the public about actual or alleged Federal Government activity (or) failure to obtain the records on an expedited basis (could or could not) reasonably expect to lead to an imminent loss of substantial due process rights, (or) release (would or would not) serve a humanitarian need by promoting the welfare and interests of mankind (and/or) your request for expedited processing did not meet the statutory requirements of the FOIA; you did not provide enough information to make a determination of compelling need for the information you requested (and/or) you did not properly certify your request.

(j) If you deny a request for expedited processing:

If you consider our decision not to expedite your request incorrect, you may appeal our decision. Include in your appeal letter the reasons for reconsidering your request for expedited processing, and attach a copy of this letter. Address your appeal to Secretary of the Air Force through (address of MAJCOM FOIA office). In the meantime, we will continue to process your request in the (simple/complex) processing track.

(k) Certification, computer systems manager (electronic records or format requested).

(When answering a request for electronic records, based on the configuration of your hardware and/or software, certain factors may make a particular request complex. Have your computer system manager advise you whether or not they can create the new record/format on a ''business as usual'' basis. If producing the record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment, you do not need to process the request. The FOIA office needs to get a certification from the computer systems manager to document this determination to support their response. Possible language for this certification is provided below.)

I, (rank/grade and name) am the computer systems manager for (organization with electronic records responsive to FOIA request). In consultation with (FOIA office), I have considered the FOIA request of

(requester's name), our ##### (FOIA identifier), which asked for (describe electronic record or format). We (do/do not) have electronic records that are responsive to this request (or) data that we (can/cannot) configure into the requested format. (If there are electronic records) The existing electronic records (do/do not) contain nonreleasable data that we (can/cannot) remove from the electronic record. Because of the way our (computer system/database/software) (use all that apply, specify hardware and/or software nomenclature if possible; for example, IBM ###, Microsoft Excel) is configured, creating the electronic record (or) modifying the existing record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment (describe how responding would interfere and time/manpower resources required, give estimated reprogramming time, if possible). I have applied the DoD ''standard of reasonableness'' in considering this request. I understand that when the capability exists to respond to a FOIA request that would require only a ''business as usual'' approach to electronically extract the data and compile an electronic record or reformat data to satisfy a FOIA request, then creation of the electronic record or reformatting the data would be appropriate. In this case, a significant expenditure of resources and manpower would be required to compile the electronic record (or) reformat existing data. This activity would cause a significant interference with the operation of our automated information system. I certify creation of the electronic record (or) reformatting existing data in order to respond to this request would not be reasonable, under the circumstances.

Signature

(Date Signed) (Signature Block)

(Note: Some electronic data requests may include a request for software. You may have to release government-developed software that is not otherwise exempt, if requested under the FOIA. Exemptions 1—classified software, 2—testing, evaluation, or similar software, 3—exempt by statute, 5—deliberative process/privileged software, and 7—law enforcement operations software may apply, based on the nature of the requested software. If the software is commercial off-the-shelf software, as opposed to software developed by the government, the software may qualify to be withheld from release under FOIA exemption 4.

(l) ''No (paper or electronic) records'' or ''requested format not available'' letters.

This is in response to your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received), our number #####.

A thorough search by (identify the unit(s) that tried to locate responsive records) did not locate any records responsive to your request. (If the requester asked questions, and there are no responsive records that would provide the answers to those questions): The FOIA applies to existing Air Force records; the Air Force need not create a record in order to respond to a request.

(or) A thorough assessment by the OPR and the computer systems manager has determined we cannot provide the (electronic record data) in the format you requested. (If this can be done on a ''business as usual basis):'' (Paper copies American Standard Code for Information Interchange (ASCII) files) of the data you requested are attached.

If you interpret this ''o records'' response as an adverse action, you may appeal it in writing to the Secretary of the Air Force. Your appeal should be postmarked no later than 60 calendar days from the date of this letter. Address your letter as follows: Secretary of the Air Force, Thru: (MAJCOM FOIA Office), (mailing address).

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter category) fee category; however, in this case, we have waived fees. (If paper copies or ASCII files are provided:) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. In your case, as a requester in the fee category of (add appropriate category), we have assessed a charge of $____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.) Please make your check payable to (appropriate payee) and send it to (give your complete mailing address) by (date 30 days after the letter is signed).

(m) Referral or coordination letters. (These letters are to tell the requester all or part of the request was referred to another Air Force organization, to refer or coordinate the request to another federal government organization, and to advise a nongovernment submitter a FOIA request was received for information they submitted.)G56

(1) Letter to requester.

(If all or part of a request has been referred, write to the requester:) Your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) received on ## Month year (date received), our number #####, was referred (or) must be coordinated with (give mailing address of the FOIA office to which you are referring all or part of the request, the identity of the federal government organization you are either coordinating with or are referring all or part of the request to, or that you must coordinate with the nongovernment submitter of responsive information). (On referrals:) That office will process (all/part) of your request (describe which part is being referred if the entire request is not being referred) and they will respond directly to you. (On coordinations:) That organization has a significant interest in the records (or) created the records that may answer to your request. (Before notifying a requester of a referral to another DoD component or federal agency, consult with them to determine if their association with the material is exempt. If so, protect the association and any exempt information without revealing the identity of the protected activity.) (When a nongovernment submitter is involved:) The nongovernment submitter of information that may answer your request needs time to respond to the possible release of information under the FOIA.

Because we must refer (or) coordinate your request outside our organization, your request will be delayed. We will determine whether any records are available; as soon as is practicable, a decision will be made whether to release or to withhold from disclosure any responsive records under the FOIA, 5 U.S.C. 552. Your request will be processed as expeditiously as circumstances permit.

(2) Letter to another government agency.

(If all or part of a request was referred or requires coordination, write to the government entity): On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), Attachment 1, dated ## Month year, for (summarize the request). Based on our assessment of that request, our number #####, we need to (refer/coordinate) (all/part) of that request to you (describe which part is being referred or coordinated, if it was not the entire request). (Name and phone number of person who agreed to the referral or coordination) accepted this referral (or) coordination action was on (date). We notified the requester of this action (see § 806.31).

We (do/do not) hold records responsive to this request. (If do hold is used:) Copies of responsive records located in our files are included at Attachment 3 to assist you in making your assessment on the releasability of (our/your) related records. If you need to contact us, our phone number and address is (give name, phone and complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(3) Letter to submitter of contract-related information.

(If contractor-submitted information is involved, write to the submitter:) On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Information you submitted to the Air Force was identified as responsive to this request, see copies attached.

To determine the releasability of the information contained in these documents and to give you the maximum protection under the law, please review the attached documents and give us the information outlined in § 806.31. If you feel the information is privileged or confidential, consists of proprietary commercial or financial information, and otherwise meets the statutory requirements for withholding

the information from release under FOIA exemption 4, 5 U.S.C. 552(b)(4), respond to us in writing not later than ## working days from the date of this letter (usually 30 calendar days). If you object to release of this information under the FOIA, identify the items, lines, columns or portions you believe we should withhold from release.

You will also need to provide a written explanation of how release would adversely impact or cause harm to your competitive position, your commercial standing, or other legally protected interests. An assertion that ''we should deny because all of the information was submitted in confidence'' or ''deny because all of the information was marked as proprietary in nature'' would not justify withholding of the requested information under the FOIA. If you need to contact us, call or write (give name), phone number is (give commercial number), our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(4) Letter requesting State Department coordination. (If the State Department is involved in coordinating on a request, fax or e-mail 11 CS/SCSR so they can inform SAF/IA if appropriate).

On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Because of the nature of this request, we were advised by (note the individual and organization who told you to coordinate the request with the State Department; this may be a MAJCOM or Combatant Command—give telephone and facsimile numbers if known) we need to coordinate this request with the Department of State. In accordance with DoD 5400.7–R, Air Force Supplement, we are informing you of their involvement in this FOIA request. (Provide any specifics available.) Air Force records are involved in this action. If you need to contact us, our phone number is (give commercial and DSN numbers), our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(n) Certification of initial classification or declassification authority (When denying a FOIA request, in whole or in part, because the information requested is classified, the initial classification authority, his or her successor, or a declassification authority, needs to determine if the records are ''properly and currently classified,'' and therefore must be withheld from release under FOIA exemption (b)(1); also, you need to determine that you cannot release any reasonably segregable additional portions. Language that certifies such a determination was made on a FOIA request involving classified records follows).

(1) Sample certification format—all information remains classified.

I, (rank/grade and name) am the initial classification authority (or) the successor to the original initial classification authority (or) the declassification authority for (give an unclassified description of the records concerned). In consultation with (FOIA office), I have assessed the FOIA request of (requester's name), our ##### (FOIA identifier), for records that were properly classified at the time of their creation and currently remain properly classified in accordance with Executive Order (E.O.) 12958, National Security Information, (or) contain information that we have determined is classified in accordance with E.O. 12958 Section 1.5(__) (or) in accordance with E.O. 12958 Section 1.5(__) and is also exempt from declassification in accordance with Section 1.6(__) of the E. O. (or if the record is more than 25 years old) contain information that we have determined is exempt from declassification in accordance with E.O. 12958 Section 3.4(b)(__). Unauthorized release could cause (for TOP SECRET, use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage) damage to national security. There are no reasonably segregable portions that we can release. Consequently release of this information is denied pursuant to 5 U.S.C. 552(b)(1).

Signature

(Date Signed) (Signature Block)

(2) Sample certification format—portions remain classified.

I, (rank/grade and name) am the initial classification authority (or) the successor to the original initial classification authority (or) the declassification authority for (give an unclassified description of the records concerned.) In consultation with (FOIA office), I have assessed the FOIA request of (requester's name), our ##### (FOIA identifier), that asked for records, (or) portions of which were properly classified at the time of their creation. Portions of the records currently remain properly classified in accordance with E.O. 12958. The bracketed information is currently and properly classified in accordance with Section 1.5 (add appropriate subparagraph), E.O. 12958, and is also exempt from declassification in accordance with Section 1.6(__) of the Executive Order (or if the record is more than 25 years old) contain information that we have determined is exempt from declassification in accordance with E.O. 12958 Section 3.4(b)(__). Unauthorized release could cause (for TOP SECRET use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage) damage to national security. There are no other reasonably segregable portions that we can release. Consequently this information is denied pursuant to 5 U.S.C. 552(b)(1).

Signature

(Date Signed) (Signature Block)

(o) Letter to a requester who has withdrawn their request or appeal. (If a FOIA requester has withdrawn a FOIA request or appeal, sending a final letter to the requester to close the file may be wise. Suggested language to the requester follows):

We received your Freedom of Information Act (FOIA) request (or) appeal dated ## Month year, on ## Month year (date received). After sending us your request (or) appeal, you indicated by (facsimile, letter) that you wished to withdraw your request (or) appeal. We have, therefore, closed your file without further action.

(p) Letter to a requester who has appealed after the 60-day deadline. (We will not process FOIA appeals received after the 60-day time limit, unless the requester provides adequate justification for failing to comply. If you receive a late appeal, and it gives inadequate justification for failing to comply, the FOIA office will advise the requester their appeal was closed; suggested language for a letter to an untimely requester follows.)

We received your Freedom of Information Act (FOIA) appeal dated ## Month year, on ## Month year (date received). You did not appeal within 60 days of the postmarked date of our denial letter as outlined in our agency regulation. Therefore, we are closing our file.

(q) Letter to a requester who has appealed. (There are occasions when, on reconsideration, an IDA grants all or part of an appeal. When sending their appeal to higher headquarters, notify the requester. Suggested language to a requester who has appealed follows):

We received your Freedom of Information Act (FOIA) appeal, our number #####, dated ## Month year, on ## Month year (date received). We considered the issues raised in your appeal carefully. We have decided to grant (or) partially grant your appeal.

(If you grant all or part of the appeal): Upon reconsideration, we are releasing the requested records (or) granting your request. (If the appeal is only partially granted, describe what portions remain in dispute). (If applicable): We are releasing and attaching all or portions of the responsive records. (If applicable): We will continue processing your appeal for the remaining withheld (records/information).

§ 806.28. Records with special disclosure procedures.

Certain records have special administrative procedures to follow before disclosure. Selected publications that contain such guidance are listed below.

(a) AFI 16–701, Special Access Programs.
(b) AFI 31–206, Security Police Investigations.
(c) AFI 31–501, Personnel Security Program Management.
(d) AFI 31–601, Industrial Security Program Management.
(e) AFI 36–2603, Air Force Board for Correction of Military Records.

(f) AFI 36–2706, Military Equal Opportunity and Treatment Program.
(g) AFI 36–2906, Personal Financial Responsibility.
(h) AFI 36–2907, Unfavorable Information File (UIF) Program.
(i) AFI 40–301, Family Advocacy.
(j) AFI 41–210, Patient Administration Functions.
(k) AFI 44–109, Mental Health and Military Law.
(l) AFI 51–201, Administration of Military Justice.
(m) AFI 51–301, Civil Litigation.
(n) AFI 51–303, Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights.
(o) AFI 51–501, Tort Claims.
(p) AFI 51–503, Aircraft, Missile, Nuclear and Space Accident Investigations.
(q) AFI 51–504, Legal Assistance, Notary and Preventive Law Programs.
(r) AFI 51–1102, Cooperation with the Office of the Special Counsel.
(s) AFI 61–204, Disseminating Scientific and Technical Information.
(t) AFI 61–303, Licensing Inventions Made Under Cooperative Research and Development Agreements.
(u) AFI 71–101, Volume 1, Criminal Investigations, and Volume 2, Protective Service Matters.
(v) AFI 84–101, Historical Products, Services, and Requirements.
(w) AFI 90–301, Inspector General Complaints.
(x) AFI 91–204, Safety Investigations and Reports.

§ 806.29. Administrative processing of Air Force FOIA requests.

(a) This section is a checklist format of processing steps and explanations of Air Force and DoD guidance. Each MAJCOM may elect to prepare its own checklists to tailor FOIA processing actions within its own organizations to meet their specific needs, so long as it remains consistent with guidance contained in DoD 5400.7–R, DoD Freedom of Information Act Program, and this part.

(b) Procedures: FOIA requests.

(1) Note the date the request was received, give the request a unique identifier/number, and log the request.

(2) Assess the request to determine initial processing requirements:

(3) Determine what Air Force elements may hold responsive records.

(i) Are responsive records kept at the same or different installations?

(ii) Is referral of (all/part) of the request required?

(4) Determine appropriate processing track (simple/complex/expedited). (Air Force FOIA offices without backlogs do not multitrack FOIA requests.)

Note: Requesters have a right to appeal an adverse tracking decision (for example, when it is determined their request will not be expedited). Also, if their request qualifies for the complex track, tell requesters so they may limit the scope of their request in order to qualify for the simple track. FOIA managers must assess a request before placing it into a specific processing track, and must support their actions should the requester appeal. If a request is determined to be complex, or is not expedited when the requester sought expedited processing, you must advise the requester of the adverse tracking decision in writing. See § 806.27 for sample language for this kind of letter to a requester.

(i) Simple. Defines a request that can be processed quickly, with limited impact on the responding units. The request clearly identifies the records, involves no (or few) complicating factors (e.g., there are few or no responsive records, involves only one installation and there are no outside OPRs, involves no classified records (Exemption 1), a law exempts the responsive records from disclosure (Exemption 3), no contractor-submitted records (Exemption 4), no deliberative process/privileged materials (Exemption 5), records contain no (or limited) personal privacy information/did not come from Privacy Act systems of records concerning other individuals (Exemption 6), release of records would have minimal impact on law enforcement (Exemption 7); no time extensions expected, other than the additional 10-workdays allowed in situations outlined in the FOIA). If the requested data must come from electronic records, response can be completed on a ''business-as-usual'' basis; requires no (or limited) reprogramming of automated information systems and would cause no significant interference with operation of information systems by processing a simple request/providing a response in the electronic format requested.

(ii) Complex. Defines a request whose processing will take substantial time, will cause significant impact on responding units. Complications and delays are likely (e.g., the request is vague (poor description of records, unclear who or when records were created), records are massive in volume, multiple organizations will receive tasking, records are classified (Exemption 1), records came from another command/service/a nongovernment source (Exemption 4), records are part of the Air Force's decision-making process, and not incorporated into a final decision (IG/audit reports, legal opinions, misconduct or mishap investigations etc.) or are attorney-client records (Exemption 5), records are largely personal information on another individual or came from Privacy Act systems of records (Exemption 6), records describe law enforcement activities or information from (and/or identities of) confidential sources (Exemption 7); response cannot be completed on a ''business as usual'' basis and would require extensive reprogramming or cause significant interference with operation of the automated information systems. (Advise requester, in writing, of right to limit the scope of their request in order to qualify for simple track.)

(iii) An expedited request is when a requester asks for expedited processing and explains the compelling need (imminent threat to life or physical safety; urgently needed by a person primarily engaged in disseminating information; due process; or humanitarian need) for the requested information. In order to receive expedited processing, requesters must provide a statement certifying their ''demonstration'' (description) of their specific ''compelling need'' or due process/humanitarian need is true and correct to the best of their knowledge. When a requester seeks expedited processing, FOIA offices must respond in writing to the requester within 10 calendar days after receipt of the request approving or denying their request for expedited processing. Requesters have a right to appeal an adverse decision (e.g., when it is determined their requests will not be expedited). There are four categories of FOIA requests that qualify for expedited processing:

(A) The requester asserts a ''compelling need'' for the records, because a failure to obtain records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(B) The requester asserts a ''compelling need'' for the records, because the information is ''urgently needed'' by an individual engaged in disseminating information to inform the public (primarily news media requesters; and could also include other persons with the ability to disseminate information).

Note: ''Urgently needed,'' in this case, means the information has a particular value that will be lost if it is not disseminated quickly. This normally would apply to a breaking news story of general public interest. Information of historical interest only, or sought for litigation or commercial activities would not qualify, nor would the fact a news media entity had an internal broadcast deadline of its own, which was unrelated to the ''news breaking nature'' of the information itself, cause the requested information to qualify as ''urgently needed.''

(C) Failure to obtain records quickly could cause imminent loss of substantial due process rights or providing the information quickly would serve a ''humanitarian need'' (i.e., disclosing the information will promote the welfare and interests of mankind). While FOIA requests falling into these third and fourth categories can qualify for expedited processing, process them in the expedited track behind the requests qualifying for expedited processing based on ''compelling need'' (the first two types of expedited FOIA requests).

(5) Determine fee category of requester (commercial/educational—noncommercial scientific institution—news media/all others) and assess fee issues. When all assessable costs are $15.00 or less, waive fees automatically for all categories of requesters. Assess other fee waiver or reduction requests on a case-by-case basis.

(6) Apply fee waiver/fee reduction criteria in appropriate cases (when requester asks for fee waiver/reduction).

(7) Find the responsive Air Force records (if any).

(i) Send the request to the appropriate OPRs to search for responsive records and to decide whether to recommend release of any responsive records. Include a DD Form 2086, Record of Freedom of Information (FOI), or a DD Form 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, in each request. The OPR must complete and return the appropriate forms and statements to the FOIA office.

(ii) If the OPRs find no responsive records, or if the OPRs desire to withhold any responsive records from release to the requester, the OPRs must provide a written certificate detailing either their unsuccessful search, or their reasons why the documents should be withheld from release under the FOIA; the written OPR statements must accompany the copies of the records the OPR desires to withhold as the FOIA action is processed (e.g., include it in any denial or appeal file).

Note: If any part of a FOIA request is denied, and the requester appeals that denial, include all forms, certificates and documents prepared by the OPRs in the FOIA appeal package required in paragraph (d)(5) of this section.

(c) Contacts with FOIA requesters and non-Air Force submitters of data.

(1) Contacts with Air Force elements. A FOIA request is considered ''received'' (and therefore ready to process) when the FOIA office responsible for processing the request physically receives it, when the requester states a willingness to pay fees set for the appropriate fee category, or, if applicable, when the requester has paid any past FOIA debts and has reasonably described the requested records. Keep hard/paper copies of all memoranda documenting requester contacts with Air Force elements regarding a pending FOIA request in the requester's FOIA file. If the requester contacts Air Force elements telephonically about a pending FOIA request, the Air Force member participating in the conversation must prepare notes or memorandums for record (MFR), and keep those notes or MFRs in the requester's FOIA file. If any part of a FOIA request is denied, and the requester appeals that denial, submit documentation of requester contacts with Air Force elements in chronological order in the FOIA appeal package (see paragraph (d)(1) of this section).

(2) Contacts with the FOIA Requester. See § 806.27 for samples of language to use in various types of Air Force FOIA letters. If any part of a FOIA request is denied, and the requester appeals that denial, submit documents sent by Air Force elements to the requester in the FOIA appeal package in chronological order (see paragraph (d)(5) of this section). Letters that Air Force FOIA offices may need to send to a FOIA requester include:

(i) An initial notification letter that the FOIA request was received. This letter may advise the requester that processing of the FOIA request may be delayed because:

(A) All or part of the requested records are not located at the installation processing the FOIA request (see § 806.29(c)(2)(ii)).

(B) An enormous number of records must be collected and reviewed.

(C) Other Air Force activities or other agencies, to include (if applicable) the nongovernment submitter of information, need to be involved in deciding whether or not to release the records.

(D) If you cannot complete processing of a FOIA request within 20 workdays, advise the requester of the reasons for the delay and give a date (within 30 workdays after receiving the request) when the requester can expect a final decision.

(ii) The initial notification letter may advise the requester all/part of the request was referred to another Air Force element or government activity.

(iii) The initial notification letter may advise the requester of the appropriate fee category. In cases where fees are appropriate, and requesters have not agreed to pay for responsive records and fees are likely to be more than $15.00, seek assurances that the requester agrees to pay appropriate fees. If more information is needed to make a fee category determination, or to determine whether fees should be waived/reduced, inform the requester. FOIA offices may determine fee waiver/reduction requests before processing a FOIA request; if a fee waiver/reduction request is denied, the requester may appeal that denial; he/she may also appeal an adverse fee category determination (e.g., asked for news media fees, but was assessed commercial fees.)

(iv) The initial notification letter may advise the requester the request does not sufficiently describe the desired records. If possible, help the requester identify the requested records by explaining what kind of information would make searching for responsive records easier.

(v) If Air Force elements can complete a FOIA request within the statutory 20-workday processing period, you may elect to send only a single letter to the requester, along with responsive records that are released to the requester in full.

(vi) A letter to the requester that the responding FOIA office uses multitrack processing due to a significant number of pending requests that prevents a response determination from being made within 20 workdays. This letter advises the FOIA requester that track the request is in (simple/complex); in this letter, if expedited processing was requested, the requester is advised if the request will be expedited or not. If the request is found to be complex, you must advise the requester he/she may alter the FOIA request to simplify processing. If it is determined the request will not be expedited, the requester must be told he/she can appeal. (This may be the initial letter to the requester, for Air Force elements with multitrack processing; if that is the case, this letter may include sections discussed in § 806.29(c)(2)(i)).

(vii) Subsequent letters to the requester on various subjects (for example, releasing requested records; advising reasons for delays; responding to the letters, facsimiles or calls; advising the requester of referrals to other Air Force units or government activities; involves a non-Air Force submitter, *etc.*).

(viii) A release letter to the requester, forwarding releasable responsive records with a bill (if appropriate).

(ix) A ''no records'' response letter to the requester if there are no responsive records, or, a denial letter, if any responsive records are withheld from release. FOIA managers may sign ''no records'' or ''requested format not available'' responses; they may also sign

a letter that advises a requester the fee category sought was not determined to be appropriate, or that a fee waiver/fee reduction request was disapproved, or that a request for expedited processing has been denied. An IDA must sign any letter or document withholding responsive records. When denying records, you must tell the requester, in writing: the name and title or position of the official who made the denial determination, the basis for the denial in enough detail to permit the requester to make a decision concerning appeal, and the FOIA exemptions on which the denial is based. The denial letter must include a brief statement describing what the exemptions cover. When the initial denial is based (in whole or in part) on a security classification, this explanation should include a summary of the applicable executive order criteria for classification, as well as an explanation of how those criteria apply to the particular record in question. Estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or, for records in other media, in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part. Indicate the size and location of the redactions on the records released. You must also tell the requester how he/she can appeal the denial.

(3) Contacts with non-Air Force submitters of data. Before releasing data (information or records) submitted from outside the Air Force, determine whether you need to write to the submitter of the data for their views on releasability of their data. In many cases, this non-Air Force data may fall under FOIA Exemption 4. If it appears you must contact the submitter of the data, advise the requester in writing that you must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information. Give the submitter a reasonable period of time (30 calendar days) to object to release and provide justification for withholding the documents. If the submitter does not respond, advise the submitter in writing that you have not received a reply and plan to release the records. Provide the submitter with the reasons the Air Force will release the records, and give the submitter your expected release date (at least 2 weeks from the date of your letter). This permits the submitter time to seek a temporary restraining order (TRO) in federal court, if they can convince the judge to issue such an order. See § 806.27 for samples of language to use in Air Force letters to both the FOIA requester and nongovernment submitters. Remember to include a copy of § 806.31 as an attachment to the letter sent to the nongovernment submitter.

(i) The notice requirements of this section need not be followed if the Air Force determines that the information should not be disclosed, the information has been lawfully published or officially made available to the public, or disclosure of the information is required by law.

(ii) If the submitter objects to release of the records, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter to the submitter a brief explanation and a specific release date at least 2 weeks from the date of the letter. Advise the submitter once a determination is made that release of the data is required under the FOIA, failure to oppose the proposed release will lead to release of submitted data. Also advise the requester such a release under the FOIA will result in the released information entering the public domain, and that subsequent requests for the same information will be answered without any formal coordination between the Air Force and the submitter, unless the information is later amended, changed, or modified. A person equal to, or higher in rank than, the denial authority makes the final decision to disclose responsive records over the submitter's objection.

(iii) When a previously released contract document has been modified, any contract documents not in existence at the time of an earlier FOIA request that are responsive to a later FOIA request for the same contract, will be processed as a first-time FOIA request for those newly created documents. Notify the nongovernment submitter of the pending FOIA action, and give them the same opportunity to respond as is detailed above. Passage of a significant period of time since the prior FOIA release can also require Air Force elements to comply with the notice requirements in this paragraph.

(d) Denying all or part of a request. When responsive records are withheld from release (denied), the appropriate offices must prepare a denial package for the IDA. Air Force elements must send the request, related documents, and responsive records through their IDA's FOIA office to the IDA for a decision. The denial package must include:

(1) The FOIA request and any modifications by the requester.

(2) A copy of the responsive records, including both records that may be released and records recommended for denial.

(3) Written recommendations from the OPRs and an Air Force attorney.

(4) The exemptions cited and a discussion of how the records qualify for withholding under the FOIA. This discussion should also include the reasons for denial: to deny release of responsive records requested under the FOIA, you must determine that disclosure of the records would result in a foreseeable harm to an interest protected by a FOIA exemption (or exemptions), that the record is exempt from release under one or more of the exemptions of the FOIA, and that a discretionary release is not appropriate.

(5) Any collateral documents that relate to the requested records. For example:

(i) If the requested records came from a non-Air Force or non-U.S. Federal Government submitter, include any documents from the submitter that relate to the release or denial of the requested records. If you are not sure whether or not the non-Air Force or non-U.S. Federal Government submitted information is potentially exempt from release under the FOIA, contact an Air Force attorney. FOIA Exemptions 3, 4, 5, 6, and 7 may apply.

(ii) If the requested records came from Privacy Act systems of records, include a written discussion of any Privacy Act issues.

(iii) If any requested records came from another Air Force element, or release of the requested records would affect another Air Force element, FOIA offices should coordinate with that other element. If the FOIA request is not completely referred to the other element, include documents from that element.

(iv) If any requested records are classified, include a written certification from a classification authority or declassification authority stating the data was properly classified originally, that it remains properly classified (per E.O. 12958), and, if applicable, that no reasonably segregable portions can be released.

(e) FOIA appeal actions.

(1) If an IDA, or a FOIA office responding on behalf of an IDA, withholds a record from release because they determine the record is exempt under one or more of the exemptions to the FOIA, the requester may appeal that decision, in writing, to the Secretary of the Air Force. The appeal should be accompanied by a copy of the denial

letter. FOIA appeals should be postmarked within 60 calendar days after the date of the denial letter, and should contain the reasons the requester disagrees with the initial denial. Late appeals may be rejected, either by the element initially processing the FOIA appeal, or by subsequent denial authorities, if the requester does not provide adequate justification for the delay. Appeal procedures also apply to the denial of a fee category claim by a requester, denial of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis of a determination not to grant expedited access to agency records, and for ''no record'' or ''requested format not available'' determinations when the requester considers such responses adverse in nature.

(2) Coordinate appeals with an Air Force attorney (and the OPR, if appropriate) so they can consider factual and legal arguments raised in the appeal, and can prepare written assessments of issues raised in the appeal to assist the IDA in considering the appeal. MAJCOM FOIA offices and 11 CS/SCSR (for OPRs at HQ USAF and SAF), send all appeals to the Secretary of the Air Force through AFLSA/JACL for consideration, unless the IDA has reconsidered the initial denial action, and granted the appeal.

(3) If a requester appeals a ''no records'' determination, organizations must search again or verify the adequacy of their first search (for example, if a second search would be fruitless, the organization may include a signed statement from either the records OPR or the MAJCOM FOIA manager detailing why another search was not practical). The appeal package must include documents (to include a certification from the records OPR) that show how the organization tried to find responsive records. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits will be required to support the adequacy of any searches conducted.

(4) General administrative matters. FOIA requesters may ultimately sue the Air Force in federal court if they are dissatisfied with adverse determinations. In these suits, the contents of the administrative appeal file are evaluated to determine whether the Air Force complied with the FOIA and its own guidance. Improper or inadequate appeal files make defending these cases problematic. Include all the documents related to the requester's FOIA action in the appeal file. If appeal file documents are sensitive, or are classified up to the SECRET level, send them separately to AFLSA/JACL, 1501 Wilson Boulevard, 7th Floor, Arlington, VA 22209–2403. Make separate arrangements with AFLSA/JACL for processing classified appeal file documents TOP SECRET or higher. Cover letters on appeal packages need to list all attachments. If a FOIA action is complicated, a chronology of events helps reviewers understand what happened in the course of the request and appeal. If an appeal file does not include documentation described below, include a blank sheet in proper place and mark as ''not applicable,'' ''N/A,'' or ''not used.'' Do not renumber and move the other items up. If any part of the requester's appeal is denied, the appeal package must include a signed statement by the IDA, demonstrating the IDA considered and rejected the requester's arguments, and the basis for that decision. This may be a separate memorandum, an endorsement on a legal opinion or OPR opinion, or the cover letter which forwards the appeal for final determination. Include in the cover letter forwarding the appeal to the Secretary of the Air Force the name, phone number and e-mail address (if any) of the person to contact about the appeal. The order and contents of appeal file attachments follow.

(i) The original appeal letter and envelope.

(ii) The initial FOIA request, any modifications of the request by the requester or any other communications from the requester, in chronological order.

(iii) The denial letter.

(iv) Copies of all records already released. (An index of released documents may be helpful, if there are a number of items. If the records released are ''massive'' (which means ''several cubic feet'') and AFLSA/JACL agrees, an index or description of the records may be provided in place of the released records. Do not send appeal files without copies of released records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the released records in appeal files. If you do not send the released records to AFLSA/JACL when a FOIA requester has appealed a partial denial, retain a copy of what was released for 6 years.)

(v) Copies of all administrative processing documents, including extension letters, search descriptions, and initial OPR recommendations about the request, in chronological order.

(vi) Copies of the denied records or portions marked to show what was withheld. If your organization uses a single set of highlighted records (to show items redacted from records released to the requester), ensure the records are legible and insert a page in the appropriate place stating where the records are located. (An index of denied documents may be helpful, if there are a number of items. If the records denied are ''massive'' (which means ''several cubic feet'') and AFLSA/JACL agrees, an index or description of the records may be provided in place of the denied records. Do not send appeal files without copies of denied records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the denied records in appeal files. If you do not send the denied records to AFLSA/JACL, when a FOIA requester has appealed a denial, retain a copy of what was denied for 6 years.)

(vii) All legal opinions in chronological order. Include a point-by-point discussion of factual and legal arguments in the requester's appeal (prepared by an Air Force attorney and/or the OPR). If the IDA does not state in the cover letter he/she signed, that he/she considered and rejected the requester's arguments, asserting the basis for that decision (e.g., the IDA concurs in the legal and/or OPR assessments of the requester's arguments) include a signed, written statement containing the same information from the IDA, either as a separate document or an endorsement to a legal or OPR assessment. Include any explanation of the decision-making process for intra-agency documents denied under the deliberative process privilege and how the denied material fits into that process (if applicable).

§ 806.30. FOIA exempt information examples.

(a) Certain responsive records may contain parts that are releasable, along with other parts that the Air Force must withhold from release. Carefully delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to ''read through the marking.'' In order to assist FOIA managers in redacting records, selected items appropriate to withhold in commonly requested Air Force records are illustrated below. When providing releasable portions from classified paragraphs, line through and do not delete, the classification marking preceding the paragraph.

(b) Exemption 1. Example used is an extract from a ''simulated'' contingency plan (all information below is fictional and UNCLASSIFIED; parenthetical information and marking is used for illustrative purposes only).

(U) Air Force members will safeguard all FELLOW YELLOW data (NOTE: FELLOW

YELLOW simulates an UNCLASSIFIED code name).

During the contingency deployment in Shambala, those members assigned to force element FELLOW YELLOW will cover their movements by employing specified camouflage and concealment activities while behind enemy lines. Only secure communications of limited duration as specified in the communications annex will be employed until FELLOW YELLOW personnel return to base. (Exemption 1)

(c) Exemption 2. Example used is an extract from a ''simulated'' test administration guide (all information below is fictional and is used for illustrative purposes only).

When administering the test to determine which technicians are ranked fully qualified, make sure to allow only the time specified in HQ AETC Pamphlet XYZ, which the technicians were permitted to review as part of their test preparation. For ease in scoring this exam, correct answers are A, A, B, B, A, B, C, C, A, B, D, D, C, C, C, D; the corresponding template for marking the standard answer sheet is kept locked up at all times when not in use to grade answer sheets. (Exemption ''high'' 2)

(d) Exemption 5. Example used is a simulated IG Report of Investigation (ROI) recommendation. All parenthetical information in this example is fictional and is used for illustrative purposes only:

Having interviewed the appropriate personnel and having reviewed the appropriate documents, I recommend additional training sessions for all branch personnel on accepted Air Force standards, and the Air Force pursue administrative or judicial disciplinary action with respect to Terry Hardcase. (Exemption 5)

(e) Exemption 6. Example used is a simulated personnel computer report on a military member selected for a special assignment (all information below is fictional; information and marking is used for illustrative purposes only.):

SSgt Doe, Kerry E. Duty Title: Special Assistant to CINCPAC Duty Station: Hickam AFB HI 11111–1111 Marital Status: Divorced Home Phone: (112) 223–3344 (Exemption 6)	SSN: 111–11–1112 Office Symbol: CINCPAC/CCSA Date Assigned: 12 June 1998 Dependents: 01	Date of Birth: 22 Jun 71 Home Address: 12 Anystreet, Downtown ST 11112

(f) Exemption 7. Example used is summary of a law enforcement report on a domestic disturbance at on-base family housing (all information below is fictional and all parenthetical information is used for illustrative purposes only):

At 2140, the law enforcement desk, extension 222–3456, took an anonymous call that reported a disturbance at 1234 Basestreet, quarters allegedly occupied by two military members. SrA Patrolman (names of law enforcement investigators usually are withheld under Exemptions 6 and 7(C)) arrived on the scene at 2155. SrA Patrolman met Nora Neighbor, (names of witnesses usually are withheld under Exemptions 6 and 7(C)) who was very agitated. Because she feared her neighbors would retaliate against her if they knew she reported their fight, she asked that her name not be released before she would talk. After she was promised her identity would remain anonymous, she stated: (Nora Neighbor became a confidential informant; data that could identify her, and in some cases, the information she related, should be withheld from release under Exemptions 6, 7(C) and (D).) ''I heard cursing and heard furniture and dishes breaking. They fight all the time. I've seen Betty Battle (unless Betty is the requester, redact her name Exemptions 6 and 7(C)) with a black eye, and I also saw Bob Battle (unless Bob is the requester, redact his name Exemptions 6 and 7(C)) with bruises the day after they had their last fight, last Saturday night. This time, there was a tremendous crash; I heard a man scream ''My Lord NO!'' then I saw Betty Battle come out of the house with dark stains on her clothes—she got into her car and drove away. I could see this really well, because the streetlight is right between our houses; I'm the wife of their NCOIC. If only Nick, my husband, was here now, he'd know what to do! I haven't heard anything from Bob Battle.'' (Exemptions 6 and 7)

§ 806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of nongovernment contract-related information.

(a) The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

(b) In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government that is privileged or confidential. This generally includes information provided and received during the contracting process with the understanding that the Air Force will keep it privileged or confidential.

(c) Commercial or financial matter is ''confidential'' and exempt if its release will probably:

(1) Impair the government's ability to obtain necessary information in the future.

(2) Substantially harm the source's competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

(d) Applicability of exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

(1) Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

Note: Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2305(g) or 41 U.S.C. 423, if statutory requirements are met.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

(4) Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

(5) Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.

(6) Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320 to 2321 and 48 CFR, Chapter 2, 227.71–227.72.

(7) Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

(e) Submitter's Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.

(f) Pricing Information. Generally, the prices a contractor charges the government for goods or services would be released under the FOIA. Examples of releasable data include: bids submitted in response to an invitation for bids (IFB), amounts actually paid by the government under a contract, and line item prices, contract award price, and modifications to a contract. Unit prices contained in a contract award are considered releasable as part of the post award notification procedure prescribed by 48 CFR 15.503, unless they are part of an unsuccessful proposal, then 10 U.S.C. 2305(g) protects everything including unit price.

Appendix A to Part 806—References

Title 5, United States Code, Section 552, The Freedom of Information Act, as amended
Title 5, United States Code, Section 552a, The Privacy Act (as amended)
Title 10, United States Code, Section 2305(g), Prohibition on Release of Contractor Proposals
Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR) System
OMB Bulletin 95–01, 7 December 1994
OMB Memorandum, 6 February 1998
DoD 5200.1–R, Information Security Program, January 1997
AFI 16–701, Special Access Programs
AFI 31–206, Security Police Investigations
AFI 31–401, Information Security Program Management
AFI 31–501, Personnel Security Program Management
AFI 31–601, Industrial Security Program Management
AFI 33–129, Transmission of Information Via the Internet
AFI 35–205, Air Force Security and Policy Review Program
AFI 36–2603, Air Force Board for Correction of Military Records
AFI 36–2706, Military Equal Opportunity and Treatment Program
AFI 36–2906, Personal Financial Responsibility
AFI 36–2907, Unfavorable Information File (UIF) Program
AFPD 37–1, Air Force Information Management (will convert to AFPD 33–3)
AFI 37–124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33–324)
AFI 37–132, Air Force Privacy Act Program (will convert to AFI 33–332)
AFMAN 37–139, Records Disposition Schedule (will convert to AFMAN 33–339)
AFI 40–301, Family Advocacy
AFI 41–210, Patient Administration Functions
AFI 44–109, Mental Health and Military Law
AFI 51–201, Administration of Military Justice
AFI 51–301, Civil Litigation
AFI 51–303, Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights
AFI 51–501, Tort Claims
AFI 51–503, Aircraft, Missile, Nuclear and Space Accident Investigations
AFI 51–504, Legal Assistance, Notary and Preventive Law Programs
AFI 51–1102, Cooperation with the Office of the Special Counsel
AFI 61–204, Disseminating Scientific and Technical Information
AFI 61–303, Licensing Inventions Made Under Cooperative Research and Development Agreements
AFI 65–401, Relations With the General Accounting Office
AFI 71–101, Volume 1, Criminal Investigations
AFI 71–101, Volume 2, Protective Service Matters
AFI 84–101, Historical Products, Services, and Requirements
AFI 90–301, Inspector General Complaints
AFI 90–401, Air Force Relations With Congress
AFI 91–204, Safety Investigations and Reports

Appendix B to Part 806—Abbreviations and Acronyms

AFCA—Air Force Communications Agency
AFCIC—Air Force Communications and Information Center
AFRC—Air Force Reserve Command
AFI—Air Force Instruction
AFLSA/JACL—Air Force Legal Services Agency, General Litigation Division
AFMAN—Air Force Manual
AFPC/MSIMD—Air Force Personnel Center/ Records Management, FOIA, and Privacy Act Office
AFPD—Air Force Policy Directive
ANG—Air National Guard
ASCII—American Standard Code for Information Interchange
CFR—Code of Federal Regulations
DFAS—Defense Finance and Accounting Service
DFOISR—Director, Freedom of Information and Security Review
DoD—Department of Defense
DRU—Direct Reporting Unit
EFOIA—Electronic Freedom of Information Act
ERR—Electronic Reading Room
FOA—Field Operating Agency
FOIA—Freedom of Information Act
FOUO—For Official Use Only
GAO—General Accounting Office
GILS—Government Information Locator Service
GPO—Government Printing Office
IDA—Initial Denial Authority
IG—Inspector General
IMPAC—International Merchant Purchase Authority Card
LOA—Letters of Offer and Acceptance
MAJCOM—Major Command
MFR—Memorandum for Record
NATO—North Atlantic Treaty Organization
NORAD—North American Aerospace Defense
NTIS—National Technical Information Service
OCR—Office of Corollary Responsibility
OMB—Office of Management and Budget
OPR—Office of Primary Responsibility
PA—Privacy Act
PAO—Public Affairs Office
PAS—Personnel Accounting Symbol
RCS—Reports Control Symbol
SAF—Secretary of the Air Force
SSN—Social Security Number
USAF—United States Air Force
U.S.C.—United States Code
WWW—World Wide Web

Appendix C To Part 806—Terms

Appellate Authority—The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA).
Denial—An adverse determination on no records, fees, expedited access, or not disclosing records.
Determination—The written decision to release or deny records or information that is responsive to a request.
Disclosure—Providing access to, or one copy of, a record.
Disclosure Authority—Official authorized to release records, normally division chiefs or higher.
FOIA Manager—The person who manages the FOIA Program at each organizational level.
FOIA Request—A written request for DoD records from the public that cites or implies the FOIA.
Functional Request—Any request for records from the public that does not cite the FOIA.
Government Information Locator Service (GILS)—An automated on-line card catalog of publicly accessible information.
Glomar Response—A reply that neither confirms nor denies the existence or nonexistence of the requested record.
Initial Denial Authority (IDA)—Persons in authorized positions that may withhold records.
Partial Denial—A decision to withhold part of a requested record.

Public Interest—The interest in obtaining official information that sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing.

Reading Room—A place where the public may inspect and copy, or have copied, releasable records.

Records—The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal Law in connection with the transaction of public business and in the agency's possession and control at the time the FOIA request is made. Records include notes, working papers, and drafts.

Redact—To remove nonreleasable material.

Janet A. Long,

Air Force Federal Register Liaison Officer.

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Part IX

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 28 and 52

Federal Acquisition Regulation; Construction Industry Payment Protection Act of 1999; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAR Case 1999–302]

RIN 9000–AI60

Federal Acquisition Regulation; Construction Industry Payment Protection Act of 1999

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The proposed rule also provides enhanced payment protection for Government contracts not subject to the Miller Act. This added protection is not required by the CIPP but is considered beneficial to add consistency to the rule and to afford added protection to subcontractors and suppliers on contracts less than $100,000.00.

DATES: Interested parties should submit comments in writing on or before February 28, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: *farcase.1999-302@gsa.gov.* Please submit comments only and cite FAR case 1999–302 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ralph O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 1999–302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises FAR 28.102 and the clauses at 52.228–13, 52.228–15, and 52.228–16 to implement the CIPP Act (Pub. L. 106–49) and to enhance payment protection for Government contracts not subject to the Miller Act.

The Miller Act (40 U.S.C. 270a, *et seq.*) requires contractors performing Government construction contracts that exceed $100,000 to furnish performance and payment bonds. Previously, the required payment bond did not exceed 50 percent of contract price, and was capped at a ceiling of $2.5 million.

The CIPP Act substitutes a requirement that the payment bond generally must equal the contract price. In addition, the CIPP Act makes two procedural changes to the Miller Act, adding a requirement regarding subcontractor waiver of the right to sue on the payment bond, and modernizing the requirements for the delivery of notice by subcontractors having right of action on the payment bond.

The proposed rule amends the clause at FAR 52.228–15 to address the statutory requirement regarding waiver of the right to sue on the payment bond. The delivery of notice by subcontractors having right of action on the payment bond is not an issue addressing either the contracting officer or the contractor, and is not addressed in the proposed rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule requires prime contractors to provide increased payment protection for subcontractors that furnish labor or materials on Federal construction projects. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The primary objective of this rule is to enhance payment protection for subcontractors that furnish labor or materials on Federal construction projects. The rule will require all contractors to which the Government awards construction contracts exceeding $25,000 to obtain a payment bond equal to the contract price, unless the contracting officer determines that to be impractical or unnecessary. The rule is expected to benefit subcontractors seeking payment, without resulting in substantial price increases for the prime contractor obtaining the increased payment protection. We estimate that the Executive branch annually awards 54,000 construction contracts exceeding $25,000, of which half (27,000 contracts) are awarded to approximately 7,500 small business firms. We estimate that approximately 60,000 small business subcontractors could benefit from increased payment protection.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subparts 28 and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1999–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: December 17, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 28 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Revise section 28.102–2 to read as follows:

28.102–2 Amount required.

(a) *Definition.* As used in this subsection—

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract

price does not include the price of any options, except those options exercised at the time of contract award.

(b) Contracts exceeding $100,000 (Miller Act).

(1) *Performance bonds.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of performance bonds must equal—

(i) 100 percent of the original contract price; and

(ii) If the contract price increases, an additional amount equal to 100 percent of any such increase.

(2) *Payment bonds*—

(i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of any such increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Contracts exceeding $25,000 but not exceeding $100,000.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of the payment bond or the amount of alternative payment protection must equal—

(1) 100 percent of the original contract price; and

(2) If the contract price increases, an additional amount equal to 100 percent of any such increase.

(d) *Securing additional payment protection.* If the contract price increases, the Government must secure any needed additional protection by directing the contractor to—

(1) Increase the penal sum of the existing bond;

(2) Obtain an additional bond; or

(3) Furnish additional alternative payment protection.

(e) *Reducing amounts.* The contracting officer may reduce the amount of security to support a bond, subject to the conditions of 28.203–5(c) or 28.204(b).

3. Revise the section heading and paragraph (a) of section 28.102–3; and add a sentence at the end of paragraph (b) to read as follows:

28.102–3 Contract clauses.

(a) Insert a clause substantially the same as the clause at 52.228–15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed $100,000. The contracting officer may decrease the penal amount of the performance or payment bonds in accordance with 28.102–2(b). If the provision at 52.228–1 is not included in the solicitation, the contracting officer must set a period of time for return of executed bonds.

(b) * * * The contracting officer may decrease the required percentage in paragraph (b) of the clause in accordance with 28.102–2(c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.228–13 [Amended]

4. Amend section 52.228–13 by revising the date of the clause; and in paragraph (b) of the clause by removing ''50'' and adding ''100'' in its place.

5. In section 52.228–15, revise the date of the clause, paragraph (a), and paragraph (b); and add paragraph (e) to read as follows:

52.228–15 Performance and Payment Bonds— Construction.

* * * * *

Performance and Payment Bonds—Construction (Date)

(a) *Definitions.* As used in this clause—

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Unless the resulting contract price is $100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds* (Standard Form 25): The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds* (Standard Form 25–A): The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

* * * * *

(e) Any subcontractor waiver of the right to sue on a payment bond is subject to 40 U.S.C. 270b(c).

(End of clause)

6. In section 52.228–16, revise the date of the clause and paragraph (a); in paragraph (b) add ''original'' before ''contract'', twice; and revise paragraph (d) and Alternate I to read as follows:

52.228–16 Performance and Payment—Bonds Other Than Construction.

* * * * *

Performance and Payment—Bonds Other Than Construction (Date)

(a) *Definitions.* As used in this clause—

Original contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

* * * * *

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

* * * * *

(End of clause)

Alternate I (Date). As prescribed in 28.103–4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection to the Government in an amount equal to ____ percent of the contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

[FR Doc. 99–33280 Filed 12–27–99; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Tuesday
December 28, 1999

Part X

Department of Education

Bilingual Education: State Grant Program; Application for New Awards FY 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.194Q]

Bilingual Education: State Grant Program; Notice inviting applications for new awards for fiscal year (FY) 2000

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition. The statutory authorization for this program and the application requirements that apply to this competition are contained in section 7134 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7454)).

Purpose of Program: This program provides grants to State educational agencies to—(1) assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation; and (2) collect data on the State's limited English proficient (LEP) population and the educational programs and services available to that population. However, a State is exempt from the requirements to collect data if it did not, as of October 20, 1994, have a system in place for collecting the data.

Eligible Applicants: State Educational Agencies.

Applications Available: December 28, 1999.

Deadline for Transmittal of Applications: January 28, 2000.

Deadline for Intergovernmental Review: March 28, 2000.

Available Funds: $500,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR part 299.

Description of Program

Funds under this program are to be used to assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation. In addition, grantees are required to collect data on the State's LEP population and the educational programs and services available to that population unless a grantee's State did not, as of October 20, 1994, have a system for collecting data in place. However, a State that develops a system for collecting data on the educational programs and services available to all LEP students in the State subsequent to October 20, 1994 must meet this requirement. A grantee may also use funds provided under this program for the training of State educational agency personnel in educational issues affecting limited English proficient children and youth.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria under 34 CFR 75.209 and 75.210 of EDGAR and section 7134 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Providing for the education of children and youth with limited English proficiency.* (20 points) The Secretary reviews each application to determine how effectively the applicant provides, through its own programs and other Federal education programs, for the education of limited English proficient children within its State.

(2) *Need for the project.* (15 points) (i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(3) *Quality of the project design.* (25 points) (I) The Secretary considers the quality of the design of the proposed project.

(ii) determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(C) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(4) *Quality of project services.* (15 points) (I) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project is appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which entities that are to be served by the proposed technical assistance project demonstrates support for the project.

(C) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(5) *Quality of project personnel.* (10 points) (I) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources:* (5 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(B) The extent to which the budget is adequate to support the proposed project.

(C) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the project evaluation.* (10 points) (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372.

Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 28, 1999 (64 FR 22960–22963) or you may view the latest official SPOC list on the OMB Web site at the following address:

http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.194Q, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the Applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and one copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Washington, DC 20202–4725, or

(2) Hand deliver the original and one copy of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (Standard Form 424) the CFDA Number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications, checklist for applicants, and required documentation:

a. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

b. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

c. Instructions for the Application Narrative.

d. Estimated Public Reporting Burden Statement.

e. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

f. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

g. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)

h. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

i. Notice to All Applicants.

j. Checklist for Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit *one original* signed application, including ink signatures on all forms and assurances, and *one* copy of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue, SW., room 5623, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9907. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format

(*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 7454.

Dated: December 21, 1999.

Arthur M. Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Public Reporting Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0541. Expiration date: December 31, 2001. The time required to complete this information collection is estimated to average 60 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5623, Mary E. Switzer Building, Washington, DC 20202–6510.

Instructions for the Application Narrative

Abstract

The narrative section should begin with an abstract that includes a short description of the LEP population in the State, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance Form (SF 424).

2. Budget Information Form (ED Form No. 524).

3. Itemized budget for each year.

4. Assurances—Non-Construction Programs Form (SF 424B).

5. Certifications, Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).

6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) (if applicable).

7. Disclosure of Lobbying Activities Form (SF–LLL).

8. Notice to All Applicants (OMB Control No. 1801–0004)—Information that addresses section 427 of the General Education Provisions Act.

9. Table of Contents.

10. Application Narrative, including abstract.

11. One original and one copy of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____

_____ City _____ State _____ County _____ ZIP Code + 4 _____ - _____

Organizational Unit

2. Applicant's D-U-N-S Number: |__|__|__|__|__|__|__|__|__|__|__|__|

3. Catalog of Federal Domestic Assistance #: **84.1|9|4|Q|** ==> Title: **Bilingual Education: State Grant Program**

4. Project Director: _____

Address: _____

_____ City _____ State _____ Zip code + 4

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ___Yes ____No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State	H - Independent School District
B - County	I - Public College or University
C - Municipal	J - Private, Non-Profit College or University
D - Township	K - Indian Tribe
E - Interstate	L - Individual
F - Intermunicipal	M - Private, Profit-Making Organization
G - Special District	N - Other *(Specify)*: _____

7. Novice Applicant ___Yes ____ No

Application Information

8. Type of Submission:

-PreApplication	*-Application*
____Construction	____Construction
____Non-Construction	____Non-Construction

9. Is application subject to review by Executive Order 12372 process?

____ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/_____

____ No *(If "No," check appropriate box below.)*
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

10. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

11. Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No

a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

_____ *OR* _____

c. IRB approval date: ____ Full IRB **or**
_____ ____ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$ _____.00
b. Applicant	$ _____.00
c. State	$ _____.00
d. Local	$ _____.00
e. Other	$ _____.00
f. Program Income	$ _____.00
g. TOTAL	$ _____.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. Signature of Authorized Representative

_____ Date: ___/____/_____

ED 424 (rev 12.22.98)

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a

separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

--Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

--Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or*

associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION **BUDGET INFORMATION** **NON-CONSTRUCTION PROGRAMS**	OMB Control Number *Draft* Expiration Date: *Pending OMB Clearance*
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. **a. Name and Address of Lobbying Registrant** *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 99–33638 Filed 12–27–99; 8:45 am]
BILLING CODE 4000–01–C

federal register

Tuesday
December 28, 1999

Part XI

Department of Housing and Urban Development

1999 HUD Disaster Recovery Initiative; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4482–N–01]

1999 HUD Disaster Recovery Initiative

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice provides requirements to govern the use of $20 million in Community Development Block Grant (CDBG) funds for additional unmet disaster recovery needs.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Empowering Communities for Recovery

A. Purpose

1. This Notice describes policies and procedures applicable to the HUD Disaster Recovery Initiative (DRI) for funds appropriated under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681, approved October 21, 1998).

2. When a community is hit hard by a natural disaster, there is often a long, difficult process of recovery. Most impacted areas never fully recover because of limited resources. HUD is uniquely positioned to support other Federal agencies in assisting States and communities with disaster recovery, because of its mission and experience as the Federal Government's agency for addressing a broad spectrum of needs related to community viability (e.g., housing, economic and community development).

3. HUD's Disaster Recovery Initiative helps communities impacted by natural disasters receiving Presidential declarations.

4. DRI funds are intended to support the activities of other Federal agencies and cannot be used for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or the U.S. Army Corps of Engineers (Corps of Engineers).

B. Authority

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277, 112 Stat. 2681, approved October 21, 1998).

C. Benefiting Persons of Low and Moderate Income

1. DRI funds are provided by a supplemental appropriation under the Community Development Block Grant program authority of title I of the Housing and Community Development Act of 1974, (42 U.S.C. 5301 *et seq.*). Use of those funds is governed by that Act and regulations at 24 CFR part 570, except as modified by this notice and a separate notice of waivers and modifications appearing elsewhere in today's **Federal Register**. The primary objective of that program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. States and State grant recipients should give maximum feasible priority to funding activities that benefit persons of low and moderate income.

2. A State must use more than 50 percent of its DRI funds for activities that benefit primarily persons of low and moderate income. The Secretary may waive this requirement only on a case-by-case basis and only upon making a finding of a compelling need to do so. HUD will consider such a waiver only after it receives a request from a State that includes a justification that establishes a compelling need for the waiver. The compelling need must reflect a public purpose directly related to disaster recovery, and the justification must include a determination by the State, with supporting documentation, that there is no practicable alternative course of action to otherwise targeting funds to activities which principally benefit persons of low and moderate income. As required by statute, HUD will provide an explanation of the finding of compelling need to the Congressional Committees on Appropriations.

D. Definitions

Regulatory references are in title 24 of the Code of Federal Regulations (CFR), and will be cited by section (§), unless otherwise cited.

1999 Supplemental Appropriations Act means the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277, 112 Stat. 2681, approved October 21, 1998).

Act means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

Buildings for the general conduct of government means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various non-legislative functions or services provided by government at decentralized locations.

City means the following:

a. Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

b. Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

i. Possesses powers and performs functions comparable to those associated with municipalities;

ii. Is closely settled; and

iii. Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

Director means the Director of the Federal Emergency Management Agency.

Disaster means a major disaster declared by the President under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*) in Federal fiscal year 1998 or 1999.

Family means all persons living in the same household who are related by birth, marriage or adoption.

FEMA means the Federal Emergency Management Agency.

Household means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related

or unrelated persons who share living arrangements.

HUD means the U.S. Department of Housing and Urban Development.

Income. For the purpose of State grant recipients determining whether a family or household is of low and moderate income, such recipients may select any of the three definitions listed below for each activity. However, integrally related activities of the same type and qualifying under the same paragraph of § 570.483(b) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.483(b)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.483(b)(1)(I). Activities qualifying under § 570.483(b)(1), at the discretion of the State, must use the area income data supplied by HUD or survey data which is methodologically sound.

a. The three definitions are as follows:

i. ''Annual income'' as defined for the Public Housing and Section 8 programs at § 5.609 (except that if the DRI assistance being provided is homeowner rehabilitation, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

ii. Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(1) Wages, salaries, tips, commissions, etc.;

(2) Self-employment income from own non-farm business, including proprietorships and partnerships;

(3) Farm self-employment income;

(4) Interest, dividends, net rental income, or income from estates or trusts;

(5) Social Security or railroad retirement;

(6) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(7) Retirement, survivor, or disability pensions; and

(8) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

iii. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

b. Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the DRI grant-assisted activity shall not be considered in calculating estimated annual income.

Indian tribe means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States that is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512) before its repeal.

Low-and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low-and moderate-income persons means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Secretary means the Secretary of Housing and Urban Development.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

State means any State of the United States, and the Commonwealth of Puerto Rico, or an instrumentality thereof approved by the Governor. Additionally, except as pertains to environmental review responsibilities under Part 58, for these 1999 Supplemental Appropriations Act funds only, the term ''State'' also includes an Indian tribe.

State grant recipient means a unit of general local government that receives a DRI grant through a State. Additionally, for these 1999 Supplemental Appropriations Act funds only, the term ''State grant recipient'' also includes Indian tribes.

Unit of general local government means any city, county, town, township, parish, village or other general purpose political subdivision of a State; a combination of such political subdivisions recognized by the Secretary; and the District of Columbia.

Unmet need means projects identified by the Director as those which have not or will not be addressed by other Federal disaster assistance programs, and need that is not addressed by activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency, the Small Business Administration, or the Army Corps of Engineers.

E. Allocation and Expenditure of Funds

1. $250 million has been appropriated for the 1999 HUD Disaster Recovery Initiative under division B, title IV, Chapter 7 of the 1999 Supplemental Appropriations Act. Title IV of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, 113 Stat. 57, approved May 21, 1999) rescinded $230 million of these funds. The $20 million balance of these funds has been made available for obligation by HUD until October 1, 2002. States are responsible to HUD for the timely expenditure of funds in accordance with any expenditure deadlines HUD may include as grant agreement conditions.

2. The 1999 Supplemental Appropriations Act requires that HUD allocate funds to States, based on unmet needs identified by the director of FEMA as those which have not or will not be addressed by other Federal disaster assistance programs. HUD has used the following procedures in allocating the funds.

a. In calculating allocations, HUD will use data identified by FEMA from State, and Federal sources as unmet needs (or surrogates for unmet needs) in four areas: housing, business recovery, mitigation, and public works and facilities.

b. The allocation calculations will include appropriate weights and adjustment factors. The weightings of the unmet needs categories are at following ratios: housing, 40 percent; business recovery, 20 percent; mitigation, 20 percent; and public works and facilities, 20 percent.

c. HUD has set minimum grant amounts for the allocation of funds at the lesser of $1.5 million or the amount of unmet need identified by FEMA from State sources, except such minimum

shall not apply to funds allocated under paragraph e.

d. HUD may calculate the allocation of funds to States in one or more groupings of, or individual, disaster declarations, as it deems appropriate.

e. HUD may allocate up to $20 million in accordance with paragraph 2 of the notice published March 10, 1999, at 64 FR 11943, which amends paragraph I.E.2.e. of the notice published October 22, 1998 (63 FR 56764), to state, ''If a State certifies that it has determined that the unmet needs data previously submitted to FEMA are inaccurate or significantly incomplete, within 45 days of publication of this notice, the Governor may request HUD, in consultation with FEMA, to accept, review, and identify as unmet needs, a revised State submission of such needs. Those needs must be related to a disaster declared during fiscal year 1998 or declared prior to the date of this notice during fiscal year 1999. Such request must be accompanied by the revised unmet needs data in the same format as previously prescribed by FEMA and by a justification for reconsideration.''

3. The appropriation accounting provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), limit the availability of certain appropriations for expenditure. With respect to the funds appropriated for the 1999 HUD Disaster Recovery Initiative, this statute requires the withdrawal from the States' lines of credit any DRI funds appropriated under the 1999 Supplemental Appropriations Act that the States have not expended before October 1, 2007. This limitation may not be waived. HUD may place shorter deadlines on the expenditure of those funds via grant agreement conditions.

4. The 1999 Supplemental Appropriations Act requires that each State administer the DRI funds ''in conjunction with its Federal Emergency Management Agency program or its community development block grants program or by the entity designated by its Chief Executive Officer to administer the HOME Investment Partnerships program.'' Whichever agency the governor designates to administer the DRI funds must have the capacity to comply with all applicable requirements of this notice in a timely manner. Whichever State agency administers the DRI funds should coordinate with the agency or agencies that administer the other two programs named above.

F. Non-Federal Public Matching Funds Requirement

1. The 1999 Supplemental Appropriations Act requires that ''each State shall provide not less than 25 percent in non-Federal public matching funds or its equivalent value (other than administrative costs)'' for any 1999 HUD Disaster Recovery Initiative grant funds which it receives.

2. Match contributions must be made to DRI-funded recovery projects related to covered disasters.

3. Match may be provided by any public entity from non-Federal cash (*e.g.*, general or dedicated revenues), real estate, or other similar assets owned or controlled by the public entity or the value of public improvements and public facilities activities, or force account undertaken.

4. Match funds must be reasonably valued. For example, base the value of cash grants on the dollar value of the grant; value below market interest rate loans on the present discounted cash value of the amount of subsidy; value taxes forgiven for future years based on the present discounted cash value of the revenue foregone; and value a donation of real estate titled to the State or State grant recipient based on a professional appraisal.

5. The State must make match contributions before all DRI funds are expended. Match contributions must total not less than 25 percent of the disaster grant funds drawn from the State's line of credit, excluding funds drawn for administrative and planning costs.

6. States may not count administrative costs toward the required non-Federal public matching funds or equivalent value.

7. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award, including any other DRI grant or Community Development Block Grant, may not count as satisfying the matching contribution requirement for the HUD Disaster Recovery Initiative.

8. Match contributions must be contributed permanently to a disaster-related activity. To receive match credit for the full amount of a loan made with non-Federal public funds to a DRI funded activity, all repayment, interest, or other return on the loan must be treated as CDBG program income.

9. The following are examples that do not count toward meeting a grantee's matching contribution requirement:

a. Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended. Use of CDBG funds (defined at § 570.3) under section 105(a)(9) of the Act for payment of the non-Federal share required in connection with a Federal grant-in-aid program is permissible;

b. Contributions made with or derived from private resources or funds, regardless of when the private resources or funds were received or expended;

c. The interest rate subsidy attributable to the Federal tax exemption on financing or the value attributable to Federal tax credits;

10. Contributions are credited at the time the contribution is made and reported to HUD quarterly, as follows:

a. Credit a cash contribution when the funds are expended for a disaster-related activity or at the time the State awards DRI funds if the activity was completed before the award of DRI funds;

b. Credit the subsidy value of a below-market interest rate loan at the time of the loan closing;

c. Credit the value of State or local taxes, fees, or other charges that are normally and customarily imposed but waived, foregone, or deferred at the time the State or State grant recipient or other public entity officially waives, forgoes, or defers the taxes, fees, or other charges;

d. Credit the value of donated land or other real property at the time ownership of the property is transferred to the public entity carrying out the DRI-assisted or disaster-related activity;

e. Credit the direct cost of relocation payments and services at the time that the payments and services are provided.

11. For DRI-assisted projects involving more than one State, the State that makes the match contribution may decide to retain the match credit or permit the other State to claim the credit.

G. Submission Requirements

1. Prerequisites to a State's receipt of a DRI grant include a citizen participation plan; publication of its proposed Action Plan; notice and comment; and submission of an Action Plan for Disaster Recovery.

2. Each State must submit to HUD, for approval, an Action Plan for Disaster Recovery that describes:

a. The recovery needs resulting from the covered disaster;

b. The State's overall plan for recovery;

c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with DRI funds;

d. The State's method of distribution;

e. Units of general local government receiving State distributions;

f. The proposed uses for the DRI funds for each unit of general local government and Indian tribe receiving State distributions;

g. An explanation of why other federal disaster assistance programs do not cover the costs of unmet needs identify to FEMA;

h. An explanation of how the disaster impacted the proposed projects; and

i. The specific sources from which the match requirement will be achieved.

2A. Indian tribes, only, may omit from their Action Plans items 2(d) and 2(e) above.

3. A State must only distribute DRI funds to units of general local government, including cities (both CDBG metropolitan cities and non-metropolitan cities) and counties (including CDBG urban counties), and to Indian tribes that have the capability to carry out disaster recovery activities. Indian tribes may carry out activities directly and must meet the requirements of this notice placed on State grant recipients, except as exempted.

4. Each State must describe monitoring standards and procedures pursuant to § 91.330 and include certifications pursuant to:

a. Section 91.325(a)(1), affirmatively furthering fair housing;

b. Section 91.325(a)(3), drug-free workplace;

c. Section 91.325(a)(4), anti-lobbying;

d. Section 91.325(a)(5), authority of the State to carry out the program;

e. Section 91.325(a)(7), acquisition and relocation, except as waived;

f. Section I.G.5. of this notice, citizen participation;

g. Section 91.325(b)(2), consultation with local governments;

h. Section 91.325(b)(5), compliance with anti-discrimination laws;

i. Section 91.325(b)(6), excessive force;

j. Section 91.325(b)(7), compliance with applicable laws.

4A. Instead of following paragraph G.4., above, each Indian tribe must describe monitoring standards and procedures and certify that:

a. It will comply with the requirements of Title II of Public Law 90–284 (25 U.S.C. 1301) (the Indian Civil Rights Act) and any applicable anti-discrimination laws;

b. It will provide the drug-free workplace required by 24 CFR part 24, subpart F;

c. It will comply with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part;

d. It will comply with all applicable laws;

e. It possesses the legal authority to apply for the DRI grant and execute the proposed program;

f. Except as waived, it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24;

g. Prior to submission of its application to HUD, it has met the citizen participation requirements of Section I.G.5. of this notice;

h. The Action Plan for Disaster Recovery has been developed so that more than 50 percent of the funds received under this grant will be used for activities that benefit low- and moderate-income persons (as the term ''activities benefiting low- and moderate-income persons'' is used at § 570.483(b)).

5. Citizen participation.

a. In order to permit public examination and appraisal of the Action Plan for Disaster Recovery, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the State and State grant recipients shall in a timely manner—

i. Furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed DRI grant activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income;

ii. Publish a proposed Action Plan for Disaster Recovery in such manner to afford affected citizens and units of general local government an opportunity to examine its content and to submit comments on the proposed disaster recovery plan and on the community development performance of the grantee; and

iii. Provide citizens and units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under this grant from one eligible activity to another or in the method of distribution of such funds.

In preparing the Action Plan for Disaster Recovery, the State shall consider any such comments and views and may, if it deems appropriate, modify the proposed Action Plan for Disaster Recovery. The Action Plan for Disaster Recovery shall be made available to the public, and a copy shall be furnished to HUD together with the certifications required under section I.G.4. or 4A., above. Any Action Plan for Disaster Recovery may be modified or amended from time to time by the State in accordance with the same procedures required in this paragraph for the preparation and submission of such Action Plan for Disaster Recovery.

b. A DRI grant may be made only if the State certifies that it is following, and that it will require its State grant recipients to follow, a detailed citizen participation plan that:

i. Provides for and encourages citizen participation, with particular emphasis on areas in which DRI funds are proposed to be used;

ii. Provides citizens with information and records relating to the grantee's proposed use of funds, and relating to the actual use of DRI funds; and

iii. Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the State for the development and execution of its DRI Action Plan.

H. Determining Eligibility of Activities

An activity may be assisted in whole or in part with DRI funds only if all of the following requirements are met:

1. Neither the State nor its State grant recipients may use DRI funds for activities reimbursable or for which funds are made available by FEMA, SBA, or the Corps of Engineers.

2. Any project underway prior to a Presidentially declared disaster may not receive DRI funds unless the disaster directly impacted the project.

3. *Compliance with national objectives.* States receiving allocations under the HUD Disaster Recovery Initiative must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities that:

a. Will benefit to low- and moderate-income families;

b. Will aid in the prevention or elimination of slums or blight; or

c. May also include activities that the State and its State grant recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

d. Consistent with the foregoing, each State and State grant recipient must ensure, and maintain evidence, that each of its activities assisted with DRI funds meets one of the three above

national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.483.

4. *Compliance with the primary objective.* In using HUD Disaster Recovery Initiative funds under the authority of the Act, the State must meet the primary objective of the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. To meet the primary objective, more than 50 percent of the funds in each grant must be used for activities that principally benefit persons of low and moderate income as determined by the criteria under § 570.483(b), unless waived under section I.C.2. When calculating the percentage of funds expended for such activities:

a. Costs of administration and planning eligible under section I.H.6. of this notice will be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the DRI funds and, accordingly, shall be excluded from the calculation;

b. Funds expended for the acquisition, new construction, reconstruction, or rehabilitation of property for housing that qualifies under § 570.483(b)(3) must be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including DRI grant and non-DRI grant costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low- and moderate-income persons.

c. Funds expended for any other activities qualifying under § 570.483(b) must be counted for this purpose in their entirety.

5. *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

6. *Eligible activities.* DRI funds may be used for activities carried out by a State grant recipient that are relevant to disaster recovery, as described in this Notice. States and State grant recipients must use funds appropriated under the 1999 Supplemental Appropriations Act only for disaster relief, long-term recovery, and mitigation activities related to a covered disaster in communities affected by a Presidentially declared disaster that is designated during Federal fiscal year 1998 or 1999. Such communities must be in areas included in such declarations. These funds will supplement, not replace, FEMA and other Federal funds. To the extent the use of funds does not violate the restriction at section I.H., eligible activities include:

a. Acquisition of real property (including the buying out of flood-prone properties and the acquisition of relocation property);

b. Relocation payments and assistance for displaced persons, businesses, organizations, and farm operations;

c. Debris removal, clearance, and demolition to the extent that these activities are not eligible under FEMA's Public Assistance program;

d. Rehabilitation or reconstruction of residential and non-residential buildings and improvements;

e. Acquisition, construction, reconstruction, or installation of public works, facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes, to the extent that these activities are not eligible under FEMA's Public Assistance program;

f. Code enforcement in deteriorated or deteriorating areas, *e.g.*, disaster areas;

g. Assistance to facilitate homeownership among low- and moderate-income persons, *e.g.,* downpayment assistance, interest rate subsidies, loan guarantees;

h. Provision of public services, if such services are new or an increased level of services, limiting costs to no more than 15 percent of the grant amount;

i. Activities relating to energy conservation and renewable energy resources, incorporated into recovery;

j. Provision of assistance to profit-motivated businesses to carry out economic development recovery activities that benefit the public by:

i. Creating or retaining jobs for low- and moderate-income persons;

ii. Preventing or eliminating slums and blight;

iii. Meeting urgent needs;

iv. Creating or retaining community-owned businesses;

v. Assisting businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

vi. Providing related technical assistance;

k. Planning and administration costs up to 20 percent of the grant (*e.g.,* planning, urban environmental design and policy-planning-management-capacity building activities and payment of reasonable program administration costs for: general management, oversight and coordination; public information; fair housing activities; indirect costs charged to the HUD Disaster Recovery Initiative under a cost allocation plan prepared in accordance with OMB Circulars A–21, A–87, or A–122 as applicable; and submission of applications for Federal programs; as well as,

l. Any other activity authorized under section 105(a) of the Housing and Community Development Act of 1974, as amended, not waived by this notice or subsequently, provided that it relates to recovery from a covered Presidentially declared disaster. The Department may grant waivers permitting States and State grant recipients to undertake additional activities with DRI funds if they are consistent with the requirements of division B, title IV, chapter 7 of Public Law 105–277 after a full consideration of a waiver request.

7. *Special policies governing facilities.* The following special policies apply to:

a. *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the HUD Disaster Recovery Initiative may be provided with DRI funds even if it is part of a multiple use building containing ineligible uses, if:

i. The facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

ii. The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

b. *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with DRI funds, but charges such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities, are not permitted.

8. *Special assessments under the HUD Disaster Recovery Initiative.* The following policies relate to special assessments under the HUD Disaster Recovery Initiative:

a. *Definition of special assessment.* The term ''special assessment'' means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a

public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

b. *Special assessments to recover capital costs.* Where DRI funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

i. Special assessments to recover the DRI funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

ii. Special assessments to recover the non-DRI grant portion may be made provided that DRI funds are used to pay the special assessment in behalf of all properties owned and occupied by low- and moderate-income persons. However, DRI funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate-income persons if the State or State grant recipient certifies that it does not have sufficient DRI funds to pay the assessments in behalf of all of the low- and moderate-income persons who are owner-occupants. Funds collected through such special assessments are not program income.

c. *Public improvements not initially assisted with DRI funds.* The payment of special assessments with DRI funds constitutes HUD Disaster Recovery assistance to the public improvement. Therefore, DRI funds may be used to pay special assessments provided:

i. The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this initiative, including environmental, citizen participation, and Davis-Bacon requirements;

ii. The installation of the public improvement meets a criterion for national objectives in paragraph I.H.3.a., b. or c.; and

iii. The requirements of paragraph I.H.8.b.ii. are met.

9. *Limitation on planning and administrative costs.*

a. No more than 20 percent of the sum of any grant to a State, plus program income, shall be expended for planning and program administrative costs under section I.H.6.k.

b. *State administrative costs.* The State is responsible for the administration of its HUD Disaster Recovery Initiative. The amount of DRI funds used to pay administrative costs incurred by the State in carrying out its responsibilities under this program shall not exceed 2 percent of the aggregate of the State's grant. This paragraph 9.b. does not apply to Indian tribes.

10. *Reimbursement for pre-award costs.* The effective date of the grant agreement is the date HUD obligates the appropriated funds by executing the grant agreement.

a. Prior to the effective date of the grant agreement, a State grant recipient may incur costs beginning on or after the incident date of the Presidentially declared disaster, and then charge those costs to DRI grant funds, provided that:

i. The State permits such use;

ii. Such funds do not reimburse costs paid with other Federal grant funds; and

iii. The costs and activities funded are in compliance with the requirements of this initiative and with the Environmental Review Procedures stated in 24 CFR part 58 including the prohibition contained in § 58.22(a) on commitment of HUD assistance and non-HUD funds prior to HUD approval of the Request for Release of Funds and the certification of the responsible entity for activities that require an environmental review.

11. *Activities outside the jurisdiction of the unit of general local government.* DRI funds may assist an activity located outside the jurisdiction of the unit of general local government that receives the DRI funds as a State grant recipient, provided the unit of general local government determines that the activity is meeting its disaster recovery needs.

I. Guidelines for Evaluating and Selecting Economic Development Projects

HUD provides guidelines to assist the recipient to evaluate and select activities to be carried out for economic development recovery purposes under paragraph H.6.j. 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 projects costs and financial requirements are not. The guidelines and standards may be found at § 570.482(e) and (f). HUD may consider the waiver of such standards on a case-by-case basis upon submission of a written justification as to why the recipient cannot meet the requirement and a proposed alternative that assures at least a minimum level of public benefit.

J. Ineligible Activities

1. *General government expenses.* Except as otherwise specifically authorized in this Notice, or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the State or unit of general local government are not eligible for assistance.

2. The following activities may not be assisted with DRI funds unless authorized under provisions of section 105(a)(15) of the Act.

a. *Purchase of equipment.* The purchase of equipment with DRI funds is generally ineligible.

i. *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of DRI funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible.

ii. *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible.

iii. *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. DRI funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A–21, A–87 or A–122, as applicable) for such items when necessary for use by a State grant recipient or its subrecipients in the administration of activities assisted with DRI funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service.

b. *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the HUD Disaster Recovery Initiative. For example, the use of DRI funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible, even if no other costs of providing such a service are assisted with such funds.

Examples of ineligible operating and maintenance expenses are:

i. Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which DRI funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

ii. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

c. *Income payments.* The general rule is that DRI funds may not be used for income payments. For purposes of the HUD Disaster Recovery Initiative, ''income payments'' means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

3. *Use of DRI funds as a non-Federal cost-share for Corps of Engineers projects.* The use of more than $250,000 in DRI funds as a non-Federal cost-share for any project funded by the Secretary of the Army through the Corps of Engineers is ineligible.

4. *Prohibition on use of DRI funds for employment relocation activities.* No DRI funds may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

K. Treatment of Program Income

Any program income generated by HUD Disaster Recovery Initiative becomes program income to the State's CDBG program, not to its DRI grant. Such program income shall be returned to the State as program income for the year in which the State redistributes those funds. Therefore, any program income generated by DRI funds is to be included in cost cap calculations and program requirements for use of the CDBG funds. For States not participating in the CDBG program, program income received by the State after closeout of its grant is not subject to any Federal requirement.

L. Acquisition (Buyouts) of Flood-Damaged Properties

1. *Payment of pre-flood values for buyouts.* HUD Disaster Recovery Initiative State grant recipients have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or flood plain. In using DRI funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

2. *Duplication of benefits and optional relocation payments with buyouts.*

a. Optional relocation assistance should only be provided to the extent necessary for displaced persons to relocate in a ''comparable replacement dwelling,'' as defined in 42 U.S.C. 4601(10) and 49 CFR 24.2(d), except as provided by HUD with prior approval on a case by case basis when sufficient cause exists due to extraordinary erosive economic impact of relocation, and shall not exceed an amount equal to the housing replacement cost minus:

i. Net proceeds from any flood insurance payment (proceeds net of the cost of documented repairs of flood damage);

ii. Personal tax savings that result from an owner's tax deduction of capital loss on displacement property;

iii. FEMA Hazard Mitigation Grant Program acquisition proceeds, and

iv. SBA disaster loan assistance.

3. *Buyout of undamaged properties.* Many buyout projects contain some properties that were undamaged by the floods. Local administrators sometimes seek to offer buyouts to owners of undamaged properties to maximize clearance of the flood plain. Purchase of such properties with DRI funding is permitted if the properties are incidental to the project as a whole.

4. *Ownership and maintenance of acquired property.*

Any property acquired with DRI funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

5. *Future Federal assistance to owners remaining in flood plain.*

a. Section 582 of the National Flood Insurance Reform Act of 1994 (in Title V of Pub. L. 103–325) (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

b. Section 582 also implies a responsibility for a grantee that receives DRI funds or that, under section 122 of the Act, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

c. *Duty to notify.* In the event of the transfer of any property described in paragraph e, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

i. Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

ii. Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

d. *Failure to notify.* The transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property, if a transferor fails to make notification and, subsequent to the transfer of the property:

i. The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

ii. The property is damaged by a flood disaster; and

iii. Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage.

e. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

f. The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' This prohibition applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (*i.e.,* earthquakes, fire, wind, *etc.*). The term ''flood disaster area'' is defined in section 582(d)(2) to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

M. Other Program Requirements

1. *General.* This section I.M. enumerates laws that HUD will treat as applicable to the HUD Disaster Recovery Initiative grants to States and State grant recipients, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which HUD has enforcement responsibility. The absence of mention herein of any other statute for which HUD does not have direct enforcement responsibility is not intended to be taken as an indication that, in HUD's opinion, such statute or Executive Order is not applicable to activities assisted with DRI funds. States are governed by applicable laws.

2. *Labor standards.* In part because Davis-Bacon requirements are not applicable to FEMA disaster grants, it is necessary to clarify the applicability of Davis-Bacon requirements in relationship to the use of DRI funds in disaster recovery efforts. This section of this Notice addresses Davis-Bacon applicability to use of DRI funds to reimburse property owners for construction work either completed or in process at the time use of those funds is contemplated. In accordance with the authority under section 107(e)(2) of the Act, HUD has waived the labor standards requirements of Indian tribes under DRI.

In accordance with Section 110(a) of the Act, construction work financed in whole or in part with DRI funds is subject to Federal labor standards provisions including the payment of Davis-Bacon prevailing wage rates. Additionally, such work is subject to the requirements of the Copeland Act governing the certification and submission of weekly payroll reports and prohibiting kick-backs and other impermissible deductions from wages, and the overtime requirements of the Contract Work Hours and Safety Standards Act. The requirements found in Department of Labor (DOL) regulations for Davis-Bacon administration and enforcement (29 CFR parts 1, 3, 5, 6, and 7) also apply.

a. *Applicability.* DRI activities are subject to program policies and parameters for Federal labor standards applicability at § 570.603. The labor provisions apply to rehabilitation of residential property only if such property contains 8 or more units.

b. *Volunteers.* Section 110(b) of the Act provides for the use of volunteer labor on construction work subject to Federal labor standards. Volunteers may be utilized to the extent permitted under the regulations in 24 CFR part 70.

c. *Work in progress.* In accordance with 29 CFR 1.6(g), if DRI funds are approved after start of construction (*e.g.,* rehabilitation), Davis-Bacon requirements apply to the construction work. In such cases, the appropriate Davis-Bacon wage decision and contract standards must be incorporated into the contract specifications retroactively to the date of award or to the start of construction, if there is no contract award. However, HUD may request, and the DOL may approve, a wage determination effective on the date the DRI funding is approved (*i.e.,* not retroactively to the start of construction), provided that HUD considers and DOL agrees that it is necessary and proper in the public interest to prevent injustice or undue hardship, and provided further that there is no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate.

d. *Reimbursement for completed construction work.* When DRI funds are proposed to reimburse property owners for construction work performed and fully completed as disaster damage rehabilitation, Federal labor standards provisions (*i.e.,* Davis-Bacon wage rates and related requirements) are not applicable to the completed work provided that:

i. Neither the owner nor the unit of general local government contemplated use of or reimbursement by DRI funds for the rehabilitation(s) before or during the time construction work was underway; and

ii. No other Federal funding requiring the payment of Davis-Bacon wage rates was used to carry out the work.

In these cases, the use of DRI funds to reimburse owners for completed rehabilitation does not constitute financing of construction work within the meaning of the labor standards provisions of section 110 of the Act.

e. *Davis-Bacon Streamlining.* The HUD Office of Labor Relations has instituted a number of streamlining measures that significantly reduce the paperwork/recordkeeping burdens commonly attributed to Davis-Bacon projects. In addition, Labor Relations headquarters and field staff are committed to providing expedited processing on all matters related to DRI activities.

Note that most forms of DRI assistance to homeowners would not trigger Davis-Bacon requirements. Grantees should contact Richard S. Allan, Assistant to the Secretary for Labor Relations (Acting), or Jade M. Banks at (202) 708–0370 for assistance in determining whether and to what extent Davis-Bacon requirements apply to specific activities undertaken with DRI funds. Information about Federal labor standards provisions and HUD programs is also available on the HUD Homepage at: http://www.hud.gov/olr/olr__int2.html.

3. *National Flood Insurance Program.* State DRI grants are subject to sections 102(a) and 202(a) of the Flood Disaster Protection Act of 1973, respectively for the requirements for assisted property owners to purchase flood insurance and the effect of nonparticipation of the community in the flood insurance program. These requirements cannot be waived.

a. State grant recipients may not use HUD Disaster Recovery Initiative funding in flood hazard areas for acquisition or construction projects in communities that have been identified by FEMA as nonparticipating,

noncompliant communities under the National Flood Insurance Program. Specific guidance can be found in the references in section I.M.3.b. Listings of participating, nonparticipating, and suspended communities are in the FEMA Federal Insurance Administration's ''National Flood Insurance Program Community Status Book,'' available on the World Wide Web at http://www.fema.gov/home/fema/csb.htm for viewing or downloading. FEMA's revised publication, ''Mandatory Purchase of Flood Insurance Guidelines,'' reflecting new provisions of the National Flood Insurance Reform Act of 1994 is also available on the World Wide Web at http://www/fema.gov/nfip/mpurfi.htm.

b. Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 4003(a)), one year or more after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of FEMA as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of a State's Action Plan for Disaster Recovery, funds shall not be expended for acquisition or construction purposes in an area that has been identified by FEMA as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79, or less than a year has passed since FEMA notification to the community regarding such hazards; and, where the community is participating, flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a).)

N. Waiver of Statutory and Regulatory Requirements That Would Otherwise Apply to the HUD Disaster Recovery Initiative

1. Division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act, provides that in administering these amounts, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute. As noted, the Secretary may not waive statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, or labor standards. Also, as provided in implementing language in section I.C.2. in this notice, the statute requires that more than 50 percent of the funds must benefit primarily persons of low and moderate income unless HUD makes a finding, based on a State's request, that there is a compelling need to waive such requirement. The procedures set forth in this notice reflect the waiver of the statutory and regulatory requirements that the Secretary considered necessary for the implementation of the HUD Disaster Recovery Initiative, and that are authorized to be waived under division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act. The statutory and regulatory requirements that have been waived pertain to requirements governing consolidated planning submissions, CDBG program requirements, acquisition and relocation requirements, and other program related requirements appears elsewhere by notice in today's **Federal Register**. HUD has published a notice listing the specific statutory and regulatory requirements that have been waived and setting forth the reasons for the waivers. With respect to the waivers of these statutory and regulatory requirements, no further action need be taken by the grantees.

2. HUD may issue additional waivers (beyond those already waived by the Secretary in the implementation of this initiative) deemed appropriate under this authority. HUD will consider additional waivers on a case-by-case basis, as requested by grantees. Such waivers will receive expedited review.

3. States and State grant recipients should give priority to projects that benefit low-and moderate-income individuals to the maximum extent practicable.

II. Ensuring the Public Trust

A. Program Administrative, Recordkeeping and Reporting Requirements

The program administrative requirements at §§ 570.489–570.492, which are not otherwise waived, shall apply, except that, with respect to reporting:

1. States must submit a Performance Evaluation Report (PER) pursuant to 24 CFR 91.520, separately for the HUD Disaster Recovery Initiative, similar in all other respects to that which is required for the CDBG program regulated at 24 CFR part 570. HUD will compile this PER for the HUD Disaster Recovery Initiative from the quarterly reports submitted under paragraph 2 below, except that, with the final quarterly report submitted prior to grant closeout, States must also include with the PER a special narrative that discusses how the State assured that activities met the requirements of this notice with respect to the buyout of structures in a disaster area.

2. Congress has required that quarterly reports be submitted regarding the actual projects, localities and needs for which funds have been provided. HUD must also receive reporting information for program management purposes. Therefore, each State must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, non-HUD Disaster Recovery Initiative Federal source and funds, numbers of properties and housing units, and numbers of low- and moderate-income households. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Initiative Grant Reporting system. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the overall percent of benefit to low- and moderate-income persons. HUD has sought approval from OMB for new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165, which expires on May 31, 2001. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

B. Cost Principles

1. *Direct and indirect cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A–87, ''Cost Principles for State, Local and

Indian Tribal Governments;'' A–122, ''Cost Principles for Non-profit Organizations;'' or A–21, ''Cost Principles for Educational Institutions,'' as applicable. All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under the HUD Disaster Recovery Initiative, except for the following:

i. Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

ii. Fines and penalties (including punitive damages) are unallowable costs to the HUD Disaster Recovery Initiative.

iii. Pre-award costs for State grant recipients are limited to those authorized under § 570.489(b).

2. *Uniform administrative requirements and cost principles.* The State and State grant recipients, their agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of OMB Circulars A–87 and A–133 (implemented at 24 CFR part 45), as applicable. States shall also comply with the applicable requirements of § 570.489 that are not otherwise waived or modified by this notice.

3. *Consultant activities.* Consulting services are eligible for assistance for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

a. *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with DRI funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties that detail the responsibilities, standards, and compensation.

b. *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in § 570.489(g) and are not subject to the Level IV limitation.

C. Public Law 88–352 and Public Law 90–284; Affirmatively Furthering Fair Housing; Executive Order 11063

1. The following requirements apply to HUD Disaster Recovery Initiative:

a. Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

b. Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, for each grantee receiving a DRI grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within the State, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard and assuring that State grant recipients comply with their certifications to affirmatively further fair housing.

2. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

3. Paragraphs C.1. and C.2., above, do not apply to Indian tribes, which are instead governed by the requirements of the Indian Civil Rights Act (25 U.S.C. 1301–1303, Title II of the Civil Rights Act of 1968).

D. Section 109 of the Act

1. No person in the United States shall on the ground of race, color, religion, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with DRI funds made available pursuant to the Act. ''Funded in whole or in part with HUD community development funds'' means that DRI funds have been transferred by the State grant recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity.

2. *Specific discriminatory actions prohibited and corrective actions.*

a. A recipient may not, under any program or activity, directly or through contractual or other arrangements, on the ground of race, color, religion, national origin, or sex:

i. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.

ii. Provide any facilities, services, financial aid or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity.

iii. Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

iv. Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

v. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition that the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

vi. Deny an individual an opportunity to participate in a program or activity as an employee.

b. A recipient may not use criteria or methods of administration that have the effect of subjecting persons to discrimination on the basis of race, color, religion, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, religion, national origin, or sex.

c. A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds, may not make selections of such site or location that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, religion, national origin, or sex; or that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act.

d.i. In administering a program or activity funded in whole or in part with DRI funds regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word ''previously''

does not exclude current discriminatory practices.

ii. In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with DRI funds, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, religion, national origin or sex.

iii. After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited from taking any eligible action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

e. Notwithstanding anything to the contrary, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

3. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with DRI funds. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8.

4. Paragraphs D.1. and D.2., above, do not apply to Indian tribes, which are governed by the Indian Civil Rights Act.

E. Environmental Review Requirements

1. Prior to the commitment of any DRI funds, grantees must comply with the regulations in 24 CFR part 58. These regulations require: The analysis of potential environmental impacts; consultation with interested parties; and public notification of the results of the analysis and intent to request release of funds from HUD. State grant recipients must assume the responsibility for environmental reviews under the Disaster Recovery Initiative. States administering DRI funds must assume the responsibilities set forth in § 58.18 for overseeing the State grant recipients' compliance with environmental review requirements, including receiving requests for release of funds (RROF) and environmental certifications form State grant recipients and objections from government agencies and the public in accordance with subpart H of 24 CFR part 58. Indian tribes must forward to the responsible HUD field office the environmental certification, the RROF and any objections received, and must recommend to HUD whether to approve or disapprove the certification and RROF.

2. *Disaster recovery assistance in a floodplain.*

a. The State grant recipient must follow the eight-step decision-making process required by Executive Order 11988, Floodplain Management, as codified for HUD programs at § 55.20. The Order covers the proposed acquisition, construction, improvement, disposition, financing, and use of property in a floodplain. Other related Federal environmental laws and authorities noted at § 58.5 may also apply.

b. The Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) jointly issued a memorandum on February 18, 1997 entitled '' Floodplain Management and Procedures For Evaluation and Review of Levee and Associated Restoration Projects,'' which emphasizes the need to consider nonstructural alternatives, *e.g.,* ''buyouts,'' in flood disaster recovery activities and the need for coordination among all levels of government.

3. Environmental assessments and reviews may be tiered to eliminate duplication and to save time and resources. For other Federal programs, environmental assessments and reviews are not carried out by the State grant recipients as they are for the HUD Disaster Recovery Initiative, but are usually undertaken by Federal staff or contractors. Therefore, the State grant recipients must coordinate with other Federal agencies, e.g., FEMA, to tier environmental assessments and reviews for activities funded by programs of both Federal agencies.

4. *Joint environmental assessments between HUD and other Federal agencies.*

a. In addition to the provisions of § 58.33, the following special procedures may be employed when HUD and other Federal agencies jointly fund a project related to recovery from a covered disaster.

b. A State grant recipient administering Federal environmental requirements for the HUD Disaster Recovery Initiative may enter into cooperating agreements with other Federal agencies to prepare an environmental assessment for a HUD Disaster Recovery Initiative-funded project. The cooperating agreement will identify the project, all Federal agencies party to the agreement (including the State grant recipient acting for HUD under the provisions of 24 CFR part 58), which agency will be the lead agency and prepare the environment assessment, and the scope of the assessment, including the size and area of potential impact. The lead agency will prepare the assessment, using its own CEQ-approved procedures, and conduct all required reviews, consultations and public notifications under applicable related laws and authorities.

c. The provisions of 24 CFR part 58 would apply if a State grant recipient administering a HUD-funded program that is subject to part 58 (*e.g.,* the HUD Disaster Recovery Initiative) is the lead agency.

d. If the State grant recipient that assumes the HUD environmental review responsibilities is not the lead agency, then that government must review the completed environmental assessment that was prepared by a lead agency under the cooperating agreement. If the review of the document determines that the information is not accurate or complete or does not meet the requirements of 24 CFR part 58, a State grant recipient administering the provisions of 24 CFR part 58 must reject the assessment and prepare its own independent assessment as required in 24 CFR part 58. A State grant recipient acting as a cooperating agency remains responsible for review under authorities that may be unique to HUD-assisted projects under part 58, *i.e.,* HUD environmental standards in 24 CFR part 51 and HUD policy regarding toxic or hazardous materials. However, if a lead agency's assessment meets the requirements of part 58, except for a lack of coverage of these particular areas, the cooperating agency need not reject the assessment. In these cases, the cooperating agency may add its own review of these areas and its own findings regarding the overall environmental impact of the project.

e. If an assessment showing no significant environmental impact is adopted by a State grant recipient administering the provisions of 24 CFR part 58, it must formally record its adoption pursuant to § 58.38, prepare a statement that the proposed HUD funding of the proposed project produces no significant environmental impact (FONSI), and follow the provisions for release of funds as stated

in subpart H of 24 CFR part 58, including notice to the public and the statutory waiting period.

F. Displacement, Relocation, Acquisition, and Replacement of Housing

1. *General policy for minimizing displacement.* Consistent with the other goals and objectives of the HUD Disaster Recovery Initiative, and Executive Order 11988 on Floodplain Management, a State shall assure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this program.

2. *Relocation assistance for displaced persons at URA levels.*

a. A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

b. *Displaced person.*

i. For purposes of paragraph 2. of this section, the term ''displaced person'' means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this initiative. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(1) After notice by the State grant recipient to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this initiative that are later provided or granted.

(2) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph 2.b.i.(1) or (2), if the State grant recipient determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(4) If the person is the tenant-occupant of a dwelling unit and any one of the following two situations occurs:

(a) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(b) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

ii. Notwithstanding the provisions of paragraph 2.b.i., the term ''displaced person'' does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the State grant recipient must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date of the notice described in paragraph 2.b.i.(1) or (2) of this section, but who received a written notice of the expected displacement before occupancy.

(3) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(4) A person who the State grant recipient determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

iii. A grantee (or State or State recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

3. *Optional relocation assistance.* In connection with the use of DRI funds for buyouts, a State may permit a State grant recipient to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs 2. The State may also permit the State grant recipient to provide relocation assistance to persons receiving assistance under paragraph 2. of this section at levels in excess of those required by this paragraph. Unless such assistance is provided under State or local law, the State grant recipient shall provide such assistance only upon the basis of a written determination that the assistance is appropriate. The State grant recipient must adopt a written policy available to the public that describes the relocation assistance that the State grant recipient has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

4. *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

5. *Appeals.* If a person disagrees with the determination of the State grant recipient concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with that government. The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling, where grant, loan or guarantee funds are provided by a State, may file a written request for further review of the State grant recipient's decision to the State.

6. *Responsibility of the State.*

a. The State is responsible for ensuring compliance with these requirements, notwithstanding any third party's contractual obligation to the State grant recipient to comply with the provisions of this section. For purposes of State DRI funds, the State shall require State grant recipients to certify that they will comply with the requirements of this section.

b. The cost of assistance required under this section may be paid from local public funds, funds provided under this initiative, or funds available from other sources.

c. The State and State grant recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

G. Employment and Contracting Opportunities

1. Grantees shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) and the implementing regulations at 41 CFR chapter 60; and

2. Though requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, are waived, HUD encourages each grantee to give priority to the hiring of local low and moderate income persons and contractors in carrying out its disaster recovery activities.

3. *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.*

a. The State and State grant recipient must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

b. Affirmative steps include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance of SBA and the Minority Business Development Agency of the U.S. Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.

H. Lead-Based Paint

States shall comply with the provisions of § 570.487(c).

I. Architectural Barriers Act and the Americans With Disabilities Act

1. The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this initiative after December 11, 1995, and that meets the definition of ''residential structure'' as defined in 24 CFR 40.2 or the definition of ''building'' as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

2. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

J. Constitutional Prohibition

1. In accordance with First Amendment church/State principles, as a general rule, DRI grant assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

2. The following restrictions and limitations therefore apply to the use of DRI funds.

a. DRI funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or purposes that will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph 2.b. of this section with respect to rehabilitation and under paragraph 2.d. of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with DRI funds at no more than fair market value for a non-religious use.

b. DRI funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

i. The building (or portion thereof) that is to be improved with the HUD Disaster Recovery Initiative assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

ii. The HUD Disaster Recovery Initiative assistance is provided to the lessee (and not the lessor) to make the improvements;

iii. The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

iv. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

v. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

vi. The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

vii. The lessee must remit the amount received from the lessor under paragraph b.vi. of this section to the recipient or subrecipient from which the DRI funds were derived.

viii. The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, *e.g.,* homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph c.

c. As a general rule, DRI funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the State grant recipient or subrecipient from which the DRI funds are derived that, in connection with the provision of such services:

i. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

ii. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

iii. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

iv. Where the public services provided under paragraph 2.c. are

carried out on property owned by the primarily religious entity, DRI funds may also be used for minor repairs to such property that are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the DRI grant expenditure for the public services.

K. Political Activities

DRI funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with DRI funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

L. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients

The requirements set forth in 24 CFR part 24 apply to this program.

M. Procurement

When procuring property or services to be paid for in whole or in part with DRI funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for State grant recipients, based on full and open competition. Methods of procurement (*e.g.,* small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by section II.N. of this notice and § 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations. The State may adopt procurement standards in § 85.36, and may adopt procurement standards in § 85.36 for its State grant recipients that are also CDBG entitlement communities regardless of whether the State adopts such standards for other State grant recipients. Indian tribes must follow the procurement standards in § 85.36.

N. Conflict of Interest

1. *Applicability.* In the procurement of supplies, equipment, construction, and services by the States, State grant recipients, and subrecipients, the conflict of interest provisions in section II.M. shall apply. In all cases not governed by section II.M., this section II.N. shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with DRI funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

2. *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph 3. of this section who exercise or have exercised any functions or responsibilities with respect to HUD Disaster Recovery Initiative-assisted activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

3. *Persons covered.* The conflict of interest provisions for paragraph 2. apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a State grant recipient, or of any designated public agencies, or subrecipients which are receiving DRI funds.

4. *Exceptions: Threshold requirements.* Upon written request by the State, an exception to the provisions of paragraph 2. of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the State grant recipient provided the State shall fully document its determination in compliance with all requirements of paragraph 4.a., including the State's position with respect to each factor at paragraph 5., and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or State grant recipient, as appropriate. An exception may be considered only after the State or State grant recipient, as appropriate, has provided the following:

a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

b. An opinion of the attorney for the State or the State grant recipient, as appropriate, that the interest for which the exception is sought would not violate State or local law.

5. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph 4. have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

b. Whether an opportunity was provided for open competitive bidding or negotiation;

c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in this paragraph 5.

f. Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

O. Performance Reviews and Dispute Resolution and Enforcement Actions

The provisions of 24 CFR subpart I apply to States, regarding HUD review of grantee performance, resolution of disputes regarding grantee performance, and adjudicative, remedial and enforcement actions that HUD may take to resolve noncompliance matters.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD

regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (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 in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the 1999 HUD Disaster Recovery Initiative are as follows: 14.219; 14.228.

Dated: December 21, 1999.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 99–33673 Filed 12–27–99; 8:45 am]

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federal register

Tuesday
December 28, 1999

Part XII

Department of Housing and Urban Development

24 CFR Part 200

Single Family Mortgage Insurance; Appraiser Roster Placement Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4429–F–02]

RIN 2502–AH29

Single Family Mortgage Insurance; Appraiser Roster Placement Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts certain of the provisions concerning HUD's Appraiser Roster that were published for public comment in a proposed rule on July 2, 1999. The Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration single family appraisals. The provisions adopted by this final rule codify the current Appraiser Roster placement procedure. The provisions published in the proposed rule concerning the Appraiser Roster removal procedure are being further considered by HUD and will be addressed in a separate rulemaking.

DATES: *Effective Date:* January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (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 (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. HUD's Appraiser Roster

HUD's Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration (FHA) single family appraisals. HUD maintains the Appraiser Roster to provide a means by which HUD can monitor the quality of appraisals performed on single family homes financed through FHA single family programs and to ensure that appraisers performing FHA appraisals meet high competency standards. The Appraiser Roster is an important part of the FHA Single Family Mortgage Insurance program because accurate appraisals are vital to the success of the Program and HUD's ability to protect the FHA insurance funds.

II. The July 2, 1999 Proposed Rule

On July 2, 1999, HUD published for public comment a proposed rule (64 FR 36216) that would have codified the current placement procedure for HUD's Appraiser Roster and proposed an independent procedure for removing an appraiser from the Appraiser Roster. HUD proposed this independent removal procedure, separate and apart from HUD's existing debarment, suspension, and limited denial of participation administrative remedies, in order to better safeguard the FHA insurance funds and to better protect homebuyers. A complete description of these procedures is presented in the preamble to the July 2, 1999 proposed rule.

III. This Final Rule

This final rule adopts certain of the provisions concerning HUD's Appraiser Roster published in the July 2, 1999 proposed rule. Specifically, this final rule adopts the provisions that codify the current Appraiser Roster placement procedure. This final rule does not adopt the independent removal procedure nor certain other related provisions. A summary of the provisions adopted by this final rule is presented in section V. of this preamble.

The public comment period for the proposed rule closed on August 2, 1999. HUD received 2 comments. We received one comment from a banking institution and the other from a trade association. One of the commenters wrote in favor of the proposed rule. The other commenter raised a number of concerns about the proposed removal procedure. Neither commenter raised issues concerning the codification of HUD's current placement procedure. Consequently, HUD is adopting this procedure without change.

HUD, however, has decided not to adopt the proposed independent removal procedure in this final rule.

IV. Plain Language

Please note that the structure of the proposed rule has been revised in this final rule to comply with President Clinton's Memorandum of June 1, 1998, entitled ''Plain Language in Government'' (63 FR 31885). In this memorandum, President Clinton directed Federal agencies to use plain language in all government writing. With respect to rulemaking, President Clinton directed Federal agencies to use plain language in new proposed and final rules beginning January 1, 1999. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communications.

In particular, the structure of this final rule has been revised to present the rule in question-and-answer format. This was done to improve clarity and to make the regulations more user-friendly. The substance of each section, however, as proposed in the July 2, 1999 rule, has not been changed. In addition, some of the proposed regulatory language has been revised. Again, these revisions do not change the substance of each section. The revisions are also intended to improve the clarity of the final rule.

V. Summary of Provisions Adopted by this Final Rule

The following table presents a summary of the provisions adopted by the final rule. The table also serves as a guide to the plain language organizational changes implemented by the final rule. The first column of the table lists the provisions of the proposed rule. If the provision has been adopted by this final rule, the second column lists where in the new organization the provision appears. If the provision has not been adopted, the second column indicates that the provision has not been adopted by the final rule.

Provision in proposed rule * * *	Adopted by this final rule at * * *
§ 200.200(a)	§ 200.200(a)
§ 200.200(b)	§ 200.200(b)
§ 200.200(c)	§ 200.202
§ 200.200(d)	Not adopted by this final rule.
§ 200.200(e)	§ 200.206
§ 200.200(f)	Not adopted by this final rule.
§ 200.200(g)	Not adopted by this final rule.
§ 200.200(h)	Not adopted by this final rule.

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned OMB control number 2502–0538. 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 final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or

provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

VII. List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons discussed in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Add subpart G to read as follows:

Subpart G—Appraiser Roster

Sec.
200.200 What is the Appraiser Roster?
200.202 How do I apply for placement on the Appraiser Roster?
200.204 [Reserved]
200.206 What are my responsibilities as an appraiser listed on the Appraiser Roster?

Subpart G—Appraiser Roster

§ 200.200 What is the Appraiser Roster?

(a) *Appraiser Roster.* HUD maintains a list of appraisers. A mortgagee must select only an appraiser from this list for the appraisal of a property that is to be the security for an FHA-insured single family mortgage.

(b) *Disclaimer.* Since an appraisal is performed to determine the maximum insurable mortgage and to also protect the FHA insurance funds, the inclusion of an appraiser on the Appraiser Roster does not create or imply a warranty or endorsement to a prospective homebuyer or to any other organization or individual by HUD of the listed appraiser nor does it represent a warranty of any appraisal performed by the listed appraiser. The inclusion of an appraiser on the Appraiser Roster means only that a listed appraiser has met the qualifications and conditions, prescribed by the Secretary, for inclusion on the Appraiser Roster.

§ 200.202 How do I apply for placement on the Appraiser Roster?

(a) *Application.* To apply for placement on the Appraiser Roster, you must submit an application to HUD.

(b) *Eligibility.* To be eligible for placement on the Appraiser Roster:

(1) You must be a state-licensed or state-certified appraiser;

(2) You must pass a HUD test on FHA appraisal methods and reporting; and

(3) You must not be listed on:

(i) The General Service Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Voice Response System.

§ 200.204 [Reserved]

§ 200.206 What are my responsibilities as an appraiser listed on the Appraiser Roster?

All appraisers listed on the Appraiser Roster are responsible for:

(a) Obtaining and reading the HUD Appraiser Handbook (4150.2) and any updates to the Handbook;

(b) Complying with the HUD Appraiser Handbook (4150.2), and any updates to the Handbook, when performing all appraisals of properties for HUD single family mortgage insurance purposes; and

(c) Complying with all other instructions and standards issued by HUD when performing all appraisals of properties for HUD single family mortgage insurance purposes.

Dated: December 17, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–33672 Filed 12–27–99; 8:45 am]

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federal register

Tuesday
December 28, 1999

Part XIII

Department of Housing and Urban Development

Disaster Recovery Initiative Waivers and Modifications; Requirements for Community Development Block Grant Funds; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4482–N–02]

1999 HUD Disaster Recovery Initiative Waivers and Modifications of Requirements for Community Development Block Grant Funds Under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers and modifications.

SUMMARY: Elsewhere in today's **Federal Register**, HUD published a notice governing the allocation and use of funds under the 1999 Disaster Recovery Initiative. In implementing this Initiative, HUD is authorized by statute to waive statutory and regulatory requirements. This notice lists the provisions being waived and provides justifications for these waivers.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277, 112 Stat. 2681, approved October 21, 1998)(1999 Supplemental Appropriations Act), under division B, title IV, chapter 7, appropriates $250 million in Community Development Block Grant (CDBG) funds to use for disaster relief, long-term recovery, and mitigation in communities affected by Presidentially declared natural disasters designated during fiscal year 1998 and 1999.

With respect to these supplemental funds, the Act provides that the Secretary of HUD:

> may waive or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds and would not be inconsistent with the overall purpose of the statute: *Provided further,* That the Secretary may waive the requirements that activities benefit persons of low-and moderate-income, except that at least 50 percent of the funds under this head must benefit primarily persons of low-and moderate-income unless the Secretary makes a finding of compelling need. *Provided further,* That, upon a finding of compelling need, the Secretary must provide an explanation of the finding to the Committees on Appropriations.

In conjunction with these statutory provisions and pursuant to 24 CFR 5.110, the Department has determined that it has good cause to waive certain regulatory provisions governing the use of Disaster Recovery Initiative funds. Therefore, to facilitate the use of the Disaster Recovery Initiative funds appropriated under division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act, the following provisions are waived for the reasons set forth below. These waivers apply to activities funded under the Act with Disaster Recovery Initiative funds.

Consolidated Submissions for Community Planning and Development Programs

Description of Requirements Waived

Citizen participation requirements at 42 U.S.C. 5304(a), 42 U.S.C. 5306(d)(5)(C), 24 CFR 91.115(c), to the extent that expedited amendment of the State's Consolidated Plan is necessary to ensure timely delivery of assistance, except that grantees must provide alternative procedures for public notice of funding availability, as approved by HUD.

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary.

The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), and 24 CFR 91.320.

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. These requirements concern the submission of an Annual Action Plan (for States receiving annual allocations of regular CDBG funding). 42 U.S.C. 5304(m) contains the requirement for submission of a Community Development Plan describing a grantee's priority non-housing community development needs. Section I.G. of the **Federal Register** notice, published elsewhere in today's **Federal Register**, implementing the Disaster Recovery Initiative establishes streamlined, alternative planning and submission requirements for Disaster Recovery Initiative funding which meet the intent of the Cranston-Gonzalez National Affordable Housing Act and the Housing and Community Development Act. All State grantees that receive formula allocations of CDBG funding have already met the statutory and regulatory requirements for the five-year strategic plan in the Consolidated Plan.

Citizen participation requirements at 42 U.S.C. 5304(a)(2) and (a)(3)(A) through (E), 24 CFR 91.110 and 91.115, and 24 CFR 570.486(a).

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. Section I.G. of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes streamlined, alternative citizen participation requirements for Disaster Recovery Initiative funding which meet the intent of the National Affordable Housing Act and the Housing and Community Development Act. Such requirements provide for public notice, appraisal, examination, and comment on the activities proposed for the use of DRI funds, but do not specifically require public hearings.

Community Development Block Grant Program

Description of Requirements Waived

Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A) and 24 CFR 570.484 (for States) that 70 percent of funds, over a period not to exceed three years, are for activities that benefit low and moderate income persons.

Justification: Grantees should give maximum feasible priority to funding activities that benefit persons of low and moderate income. Because the damage to community development and housing is without regard to income, and income-producing jobs are often lost following a disaster for a period of time, it is important to give grantees maximum flexibility to carry out recovery activities within the confines of the CDBG program national objectives, which are not waived. Also, with mitigation activities such as the buyout of flood-prone properties, it is within the community's interest and consistent with Federal disaster and floodplain policy to reduce the risks to health and safety and to lessen future disaster damage and related costs by buying out all properties with areas at risk, rather than taking a patchwork approach. Section I.C.2 of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes requirements for complying with the statutory mandate that each grantee's program principally (at least 50%) benefit low- and moderate-income persons.

Requirements at 42 U.S.C. 5305(a) and 24 CFR 570.482(a) through (d), concerning activities eligible for funding under the Disaster Recovery Initiative.

Justification: To give maximum flexibility to grantees in addressing the wide variety of needs resulting from natural disasters, the Department has established alternative requirements for eligible activities at section I.H. of the **Federal Register** notice implementing the Disaster Recovery Initiative. These requirements will ensure compliance with the eligibility requirements of the Act and will ensure accountability in the use of funds.

The 50 percent of downpayment limitation on direct homeownership assistance for low or moderate income homebuyers at 42 U.S.C. 5305(a)(24)(D).

Justification: Required to provide additional assistance to low/moderate income disaster victims in instances in which direct homeownership assistance with 50 percent of a downpayment is insufficient.

Provisions of 42 U.S.C. Chapter 69—Community Development and 24 CFR part 570 that would prohibit States electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities and to Indian tribes, including 42 U.S.C. 5306(d)(1) and (2)(A) and 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in nonentitlement areas and to Indian tribes.

Justification: This provides the State the flexibility necessary to meet a wide range of recovery needs in any areas of the State, including those in entitlement communities and on Indian reservations, that have been affected by the disaster.

Requirements at 24 CFR 570.480(a), 570.481(a) and 570.486(b).

Justification: These provisions describe requirements which are specific to States' administration of CDBG funding for non-entitlement areas. 24 CFR 570.480(a) indicates that other subparts of Part 570 are generally not applicable to the State CDBG program; 24 CFR 570.481(a) indicates that HUD will defer to States' interpretations of the definitions of terms contained in 42 U.S.C. 5300 *et seq.;* 24 CFR 570.486(b) governs activities serving beneficiaries outside the jurisdiction of the unit of general local government. The Act permits HUD to specify alternative requirements for purposes of the Disaster Recovery Initiative. Where possible, the **Federal Register** notice implementing the Disaster Recovery Initiative retains the administrative flexibility provided to States in the State CDBG program.

Requirements of 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a)(1) concerning the use of Disaster Recovery Initiative funds for State administrative costs, including matching funds requirements.

Justification: Waiving these provisions would prevent undue hardship on States and would further the purposes of disaster recovery, by eliminating the requirement that Disaster Recovery Initiative funds spent on State administrative costs be matched with State funding. Paragraph I.H.8.b. of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes alternative requirements for States' use of funds for costs incurred in administering this funding.

The provisions at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), for the State CDBG program, that require States to allow units of local government to retain program income. All program income will be returned to the State and will become program income for the year in which the State redistributes those funds.

Justification: Waiver of this provision will also allow States to quickly utilize all program income for other eligible activities, except that for States not participating in the CDBG program, program income received by a State after closeout of its grant shall not be subject to any Federal requirement.

Requirements of 42 U.S.C. 5306(d)(2)(C)(iii) concerning restrictions on a State's ability to limit activities eligible for funding.

Justification: Waiving these requirements will increase State grantees' flexibility in prioritizing and responding to disaster recovery needs.

Acquisition and Relocation Requirements For CDBG Disaster Supplemental Funds

Description of Requirements Waived

One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and 24 CFR 570.488, 570.606(c) and 42.375(a), for low and moderate income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation.

Justification: These requirements provide that all occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to a use other than as low/moderate income dwelling units in connection with a CDBG activity must be replaced with low/moderate income dwelling units.

These requirements are waived provided the grantee assures HUD it will use all resources at its disposal, including DRI funds authorized to be used for a program of optional relocation assistance under 42 U.S.C. 505(a)(11), to ensure no displaced homeowner will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

Not waiving this provision would discourage grantees from demolition and clearance of dwelling units that would otherwise be appropriate for CDBG assistance. Such inaction would inhibit recovery efforts and add to health and safety problems.

Relocation requirements at 42 U.S.C. 5304(d)(2)(iii) and (iv) and 24 CFR 570.606(c) and 42.350(e), to permit a grantee to meet all or part of its obligation to provide relocation benefits to displaced persons under sections 204 and 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq*) (URA).

Justification: The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and that agency will thus be eliminated.

FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(iii) and (iv) and implementing regulations at 24 CFR 570.606(c)(2). These alternative relocation benefits, available to low-and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA, respectively. The waiver assures uniform and equitable treatment for all such tenants under the URA, as qualified by this waiver.

Requirements at 49 CFR 24.2, 24.402(b)(2) and 24.404, to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income.

Justification: The failure to suspend these requirements would impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

Requirements of Sections 204 and 205 of the URA, and 49 CFR Part 24, to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter who elects to relocate to rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.,* Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

Justification: Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. The change conforms URA policy with Section 104(d) relocation assistance.

Requirements of Section 202(b) of the URA and 49 CFR 24.302, to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a ''moving expense and dislocation allowance'' based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

Justification: Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

Requirements of Section 414 of the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5181) so that Uniform Relocation Act provisions do not apply when a homeowner displaced by the disaster is assisted.

Justification: Section 414 States: ''Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.''

Failure to waive section 414 would impede disaster recovery, discouraging grantees from the acquisition, demolition or rehabilitation of disaster-damaged housing because of excessive costs that would result from replacement housing payments made to former homeowners displaced by the disaster. Homeowners actually displaced by a HUD-assisted disaster recovery project will continue to receive URA assistance. Homeowners displaced by the disaster may apply for assistance under available disaster recovery programs.

Other Applicable Requirements

Requirements of 12 U.S.C. 1701u, 24 CFR 570.607(b) and 24 CFR part 135, concerning the requirements of Section 3 of the Housing and Urban Development Act of 1968.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs. However, in the **Federal Register** notice implementing the Disaster Recovery Initiative funding, HUD encourages grantees to give priority to the hiring of local low-and moderate-income persons and contractors in carrying out its activities.

Requirements of 24 CFR 570.612 and 24 CFR part 52, concerning applicability of Executive Order 12372 regarding intergovernmental consultation and review of activities proposed for Federal funding.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs.

Additionally, section 107(e)(2) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307(e)(2)) authorizes HUD to waive the provisions of section 109 and 110 in connection with grants to Indian tribes. HUD is exercising this authority to now waive labor standards requirements of section 110 (42 U.S.C. 5310) as they would otherwise apply to Indian tribes.

Justification: Waiving the cited labor standards requirements for the use of Disaster Recovery Initiative grants to Indian tribes conforms with Departmental policy for the Indian Community Development Block Grant program.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (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 in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Dated: December 21, 1999.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 99–33674 Filed 12–27–99; 8:45 am]

BILLING CODE 4210–29–P

federal register

Tuesday
December 28, 1999

Part XIV

Department of Housing and Urban Development

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4512–N–03]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from July 1, 1999 through September 30, 1999.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the ''HUD Reform Act''), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers it has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on July 1, 1999 and ending on September 30, 1999.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the ''HUD Reform Act''), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from July 1, 1999 through September 30, 1999.

For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between October 1, 1999 through December 31, 1999.

In addition to listing the HUD waivers granted during the third quarter of 1999, this notice corrects two typographical errors contained in HUD's **Federal Register** notice of HUD waivers granted during the second quarter of 1999 (64 FR 55378, October 12, 1999). Waiver item number 56 of that notice incorrectly identified the HUD office requesting the waiver as the ''Boston Multifamily HUB.'' The correct office is the ''Buffalo Multifamily HUB.'' Additionally, the prefix number of the multifamily project involved was incorrectly identified as ''013–EE033.'' The correct prefix is ''014–EE033.'' (See 64 FR 55386.) For the convenience of readers, this notice republishes the corrected summary as waiver action number 58 of this notice.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: December 21, 1999.

Andrew Cuomo,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, July 1, 1999 through September 30, 1999

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

I. Waivers Granted by the Office of Community Planning and Development

For items 1 through 35, waivers for 24 CFR parts 42, 91, 92, 576, and 582, contact: Cornelia Robertson-Terry, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

1. Regulation: 24 CFR 42.375.

Project/activity: The State of Ohio requested this waiver for four of its grantees: Jackson City, Salisbury Township (Meigs County), Lawrence County, and Ripley Village (Brown County).

Nature of requirement: HUD's regulation at 24 CFR 42.375 requires that lower-income dwelling units that are demolished in connection with a CDBG-assisted activity be replaced with comparable lower-income dwelling units.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 30, 1999

Reasons waived: HUD determined that there was good cause for the waiver. The waiver was granted under the authority of Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters and for Overseas Peacekeeping Efforts, Including Those in Bosnia (Public Law 105–18, 111 Stat. 199). This action was taken so that acquisition of properties and relocation of persons out of the flood plain may be accomplished.

2. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Tulare, California requested a waiver of the submission date for the City's CDBG Performance Annual Evaluation Report (CAPER).

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's financial accounting system experienced a system failure and all financial data was temporarily inaccessible.

3. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Baltimore, Maryland requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's accounting system did not provide expenditure data in time for the City to complete the CAPER before the deadline. Additionally, more than 1000 CDBG activities were initiated prior to HUD's implementation of IDIS, which resulted in additional staff time devoted to updating and closing out these activities in IDIS, including a review of all financial accounts supporting these activities.

4. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Bellflower, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver due to the departure of two City employees directly responsible for this assignment.

5. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Lakewood, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The staff member responsible for this assignment was on sick leave. It would have been a financial hardship for the City to hire and train a staff person to prepare this report in the absence of the official on sick leave.

6. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Johnson City, Tennessee requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 23, 1999.

Reasons waived: HUD determined that there is good cause for the waiver. The City's financial accounting system has not been fully implemented. In addition, the City must submit its financial records to auditors and hold public hearings.

7. Regulation: 24 CFR 91.520(a).

Project/activity: The County of Baltimore, Maryland requested a waiver of the submission date for the County's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 24, 1999.

Reasons waived: HUD determined that there was good cause for the waiver due to the workload demand created by HUD's request that the County staff review HOME program data in IDIS.

8. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Lompoc, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 24, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's Finance Department was not able to provide a complete expenditure report through June 30, 1999. In addition, the City's Community Development Program has experienced a staff shortage because of an extended delay in filling the position of Grant Record Technician.

9. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Bristol, Virginia requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City experienced recent personnel changes. In addition, the City's financial data system has experienced network problems and the City is in the process of re-entering data that was lost. The financial data is needed to prepare the CAPER.

10. Regulation: 24 CFR 91.520(a).

Project/activity: The cities of Jacksonville, Wilmington, Goldsboro, Greenville, and Rocky Mount, North Carolina requested a waiver of the submission date for their CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a

performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The five cities requested an extension because the completion of the CAPER reports have been delayed due to the damage and flooding caused by Hurricane Floyd.

11. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Charlotte, North Carolina requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City was delayed in preparing its report because of recent post-HUD monitoring activities and other major project demands. The waiver will provide time for citizens to review and comment on the final CAPER before its submission to HUD.

12. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Irvine, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City has implemented a new financial system and has only recently been able to reconcile its financial data with data recorded in IDIS.

13. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Asbury Park, New Jersey requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City's program monitor/data technician recently departed and the remaining staff do not have experience with preparing the performance report using IDIS. The new program monitor did not receive her security access to IDIS in sufficient time to allow her to complete the report by the deadline.

14. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Fort Smith, Arkansas requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City requested additional time to correct data in IDIS and allow for public comment on the CAPER prior to submission to HUD.

15. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Charlottesville, Virginia requested a waiver of the submission date for the City's CAPER.

Nature of requirement: 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City experienced a recent loss of key experienced staff members.

16. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Irvington, New Jersey requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The staff person who prepared the report is out of the office and was unable to complete the report before her scheduled leave.

17. Regulation: 24 CFR 91.520(a).

Project/activity: The City of St. Cloud, Minnesota requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City did not receive its performance data from the non-profit sub-recipients that were assisted last year. As a result, the City was not able to meet the publication and public comment requirements before the deadline.

18. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Nashua, New Hampshire requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The extension was needed due to recent personnel changes in the community development staff and technical problems with IDIS.

19. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Portsmouth, Virginia requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for granting the waiver. The City staff that prepare the CAPER have been involved in resolving monitoring and audit issues. Further, the City experienced extensive damage as a result of Hurricane Floyd.

20. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Alhambra, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City needs additional time for the new Assistant City Manager to learn the CAPER reporting requirements.

21. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Oakland, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City recently experienced a reorganization of its Housing and Community Development Division.

22. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Union City, New Jersey requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City recently replaced the computer which contained HUD's Community 2020 software as well as the CAPER and IDIS data. The workload associated with backing up and replacing the information within those systems prevented the City from submitting the report before the deadline.

23. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Elizabeth, New Jersey requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City staff members who normally prepare the report were temporarily re-assigned to work on job training and implementation requirements for a CDBG-funded economic development project.

24. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Norwalk, California requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City needs additional time to meet the public comment period.

25. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Virginia Beach, Virginia requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City was delayed by Hurricanes Floyd and Dennis.

26. Regulation: 24 CFR 91.520(a).

Project/activity: The Town of Islip, New York requested a waiver of the submission date for the Town's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The Director of the Town's Community Development Agency has been incapacitated for an extended period of time. This person plays an integral role in the preparation of the CAPER.

27. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Bridgeport, Connecticut requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City experienced difficulty in extracting financial data from the internal information technology system. This data is used to complete the CAPER.

28. Regulation: 24 CFR 91.520(a).

Project/activity: Jefferson County, Kentucky requested a waiver of the submission date for the County's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 28, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The extension is needed because the County has experienced recent personnel changes and has limited staff.

29. Regulation: 24 CFR 91.520(a).

Project/activity: The City of Florissant, Missouri requested a waiver of the submission date for the City's CAPER.

Nature of requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: September 29, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. The City has a new director and

the director is not familiar with IDIS. The new director did not join the staff until August 23, 1999 and the CAPER report was due August 31, 1999.

30. Regulation: 24 CFR 92.205(c) and 92.251.

Project/activity: The City of Oklahoma City, Oklahoma requested waivers of the HOME program requirements regarding property standards and the minimum amount of assistance that may be invested in a project.

Nature of requirement: Section 92.205(c) requires that the minimum amount of HOME funds that may be invested in a project is an average of $1,000 per unit. Section 92.251 of the HOME program regulations requires that housing units assisted with HOME fund meet certain property standards.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: August 27, 1999.

Reasons waived: Oklahoma City was declared a disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. HUD determined that there was good cause for the waiver since this will allow the City to assist homeowners by granting HOME funds to pay for emergency repair costs.

31. Regulation: 24 CFR 92.216(a).

Project/activity: The State of Kansas requested a waiver of the HOME Program income targeting requirements.

Nature of requirement: Section 214(1)(A) of the National Affordable Housing Act (NAHA) and its implementing regulations at 24 CFR 92.216(a) require that, for each allocation of HOME funds received by a participating jurisdiction, 90 percent of the families assisted through rental housing (*i.e.,* occupying HOME-assisted rental housing units or receiving HOME-funded tenant-based rental) must have incomes that do not exceed 60 percent of the median family income for the area.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 30, 1999.

Reasons waived: Sedgwick County sustained substantial damage to its housing stock as a result of tornadoes on May 3, 1999. Section 290 of NAHA allows HUD the authority to suspend statutory requirements of the HOME program to address damage in an area for which the President has declared a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

32. Regulation: 24 CFR 576.21.

Project/activity: The City of Knoxville, Tennessee requested a waiver of the Emergency Shelter Grant (ESG) program regulations at 24 CFR 576.21.

Nature of requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 30, 1999.

Reasons waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.'' The only eligible activity for which 1999 ESG funds would be used will be funded by the City through its Rental Rehabilitation Program. The City's April 15th letter clearly demonstrates that support services are a major gap in Knoxville's Continuum of Care Gap Analysis.

33. Regulation: 24 CFR 576.21.

Project/activity: The City of Fall River, Massachusetts requested a waiver of the ESG program regulations at 24 CFR 576.21.

Nature of requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: August 10, 1999.

Reasons waived: HUD may waive this provision if the grantee demonstrates that other eligible activities under the program are already being carried out in the locality with other resources. The City certified that other eligible activities under the program are already being undertaken by the City with other resources.

34. Regulation: 24 CFR 576.35(b)(2).

Project/activity: The City of Minneapolis requested an extension of the 24-month expenditure deadline.

Nature of requirement: The ESG regulation at 24 CFR 576.35(b)(2) requires grantees to expend ESG funds within 24 months of the date of the grant award by HUD.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: July 16, 1999.

Reasons waived: Based on information in a letter from the City, dated May 14, 1999, HUD determined that there was good cause for granting the waiver. The Turning Point project was not able to secure the required matching funds until February 18, 1999 in order to proceed. Turning Point anticipates that its portion of the project will be expended in three months.

35. Regulation: 24 CFR 582.105(e).

Project/activity: The City of Longview, Texas requested a waiver of the eight percent administrative cap for its 1993 Shelter Plus Care grant.

Nature of requirement: This provision caps administrative expenses for Shelter Plus Care program grants at eight percent.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date granted: August 10, 1999.

Reasons waived: HUD determined that there was good cause for the waiver. By raising the cap, the City will be able to continue to administer the grant for the entire projected term of the extension. The City will be allowed to use 13.36% of its grant for administrative expenses and the grant period will be extended to June 30, 2004.

II. Regulatory Waivers Granted by the Office of Housing

For item 36, waiver granted for 24 CFR part 207, contact: James B. Mitchell, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6164, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

36. Regulation: 24 CFR 207.259.

Project/activity: Temple Courts Apartments.

Nature of requirement: HUD regulations prohibit payment of a fee to a Housing Authority other than for actual expenses of a bond refunding transaction.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reasons waived: HUD determined that there was good cause to grant the waiver. The waiver was granted to assure bond purchasers that the project will not be disadvantaged in the event of an insurance claim by reason of its status as a Section 241 insured project.

For item 37, waiver granted for 24 CFR part 291, contact: Joe McCloskey, Director, Asset Management Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9286, Washington, DC 20410; telephone: (202) 708–1672 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

37. Regulation: 24 CFR 291.210(a).

Project/activity: Waiver of the requirement of 24 CFR 291.210(a) to provide authority for governmental entities and private nonprofit organizations to purchase HUD-owned single family properties offered with mortgage insurance on a direct sales basis and to provide discounts of 50 percent for use in the Teacher Next Door Initiative.

Nature of requirement: The HUD regulations at 24 CFR part 291 permit direct sales at deep discounts off the list price of properties sold without mortgage insurance to governmental entities and private nonprofit organizations for use in HUD and local housing or homeless programs. Based on HUD's experience with Real Estate Owned (REO) sales, it would not be detrimental to the insurance fund to permit governmental entities school districts and private nonprofit organizations to purchase properties offered with mortgage insurance on a direct sales basis or to provide discounts of 50 percent on properties sold for use in the Teacher Next Door Initiative.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reasons waived: Approving the waiver enables governmental entities school districts and nonprofit organizations the opportunity to fully participate in the Teacher Next Door Initiative by purchasing properties eligible for mortgage insurance at a 50 percent discount for resale to teachers.

For items 38 through 57, waivers granted for 24 CFR part 891, contact: Willie Spearmon, Director, Office of Business Projects, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6134, Washington, DC 20410–7000; telephone: (202) 708–3000 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–977–8391.

38. Regulation: 24 CFR 891.100(d).

Project/activity: Presidential Place, Cranston, Rhode Island (Project Number: 016–EE027/RI43–S981–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reason waived: HUD determined that there was good cause to grant this waiver. Additional funds were needed because of higher development costs attributed to a sewer impact fee, a substantial ejector pump and a lift station.

39. Regulation: 24 CFR 891.100(d) and 891.165.

Project/activity: Woodgrove Apartments, Knoxville, Tennessee (Project Number: 087–HD033–NP–CMI/TN37–Q961–004).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999

Reason waived: The waivers were approved because the project was delayed due to site changes caused by community opposition. Additional funds were required as a result of the contractors' bids exceeding the capital advance amount due to bad soil, rocks, and certain site requirements imposed by the city.

40. Regulation: 24 CFR 891.100(d).

Project/activity: Options Supported Housing IV, Ronkonkoma, New York (Project Number: 012–HD072/NY36Q971001); Project Share VI, Port Jefferson, New York (Project Number: 012–HD074/NY36Q971003).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner

Date granted: August 24, 1999.

Reason waived: The capital advances issues at the fund reservation stage did not reflect the higher costs to develop projects within the New York metropolitan area.

41. Regulation: 24 CFR 891.100(d).

Project/activity: Jackson Supportive Development, Jackson, Mississippi (Project Number: 065–HD–10/MS26–Q971–002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 3, 1999.

Reason waived: Additional funds were needed for project feasibility and the Sponsors could not raise any additional funds nor did they have the capacity to provide the funds.

42. Regulation: 24 CFR 891.100(d) and 891.165.

Project/activity: Mt. Zion Baptist Church, St. Louis, Missouri (Project Number: 085–EE038/M036–S971–005).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 3, 1999.

Reason waived: The Sponsor/Owner has taken all reasonable measures to

reduce project cost by competitively bidding the project. Further, the Sponsor/Owner has incurred additional project costs due to HUD error, and has no other funds available to cover the shortfall in project development costs. Additional time was needed for the project to reach initial closing due to a HUD processing error.

43. Regulation: 24 CFR 891.100(d).

Project/activity: River View Manor, Inc., Blairsville, Georgia (Project Number: 061–HD052–WDD/GA06–Q961–007).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 22, 1999.

Reason waived: The Owner had taken all reasonable measures to reduce project cost and had no other funds available to cover the shortfall in the cost to develop the project.

44. Regulation: 24 CFR 891.165.

Project/activity: Kittery Housing, Kittery, Nebraska (Project Number: 024–HDO22/ME36–Q961–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 2, 1999.

Reason waived: HUD needed additional time to review the initial closing documents and to schedule a closing.

45. Regulation: 24 CFR 891.165.

Project/activity: Jackson Place Red Bluff, Tehama County, California (Project Number: 136–HDO09–NP–WDO/CA30–Q961–002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 14, 1999.

Reason waived: There were unforeseen delays and the Sponsors encountered cost problems that had to be resolved.

46. Regulation: 24 CFR 891.165.

Project/activity: Cross Lanes Unity Apartments, Inc., Cross Lanes, West Virginia (Project Number: 045–EE009–CA/WV15–S961–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 14, 1999.

Reason waived: Delays occurred while the Owner was identifying additional funding sources to make the project feasible.

47. Regulation: 24 CFR 891.165.

Project/activity: Jefferson Cottage, Inc., Martinsburg, Virginia, (Project Number: 045–HDO21–CA/WV15–Q961–031).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 14, 1999.

Reason waived: Owner encountered significant delays with the County Planning Commission in regard to subdivision approval.

48. Regulation: 24 CFR 891.165.

Project/activity: Haledon Consumer Home, Haledon, New Jersey (Project Number: 031–HD075/NJ39–Q91–015).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: July 26, 1999.

Reason waived: HUD required additional time in order to close the project.

49. Regulation: 24 CFR 891.165.

Project/activity: B'nai B'rith, New Haven, Conn. (Project Number: 017–EE029); C.I.B. West Hartford, Conn. (Project Number: 017–HD016).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Commissioner.

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Date granted: August 3, 1999

Reason waived: Delays were caused by the City's reluctance to issue a building permit for B'nai B'rith and HUD's delayed approval of additional funds. C.I.B. West Hartford's project was delayed because of extensive legal work required to resolve provisions of the condominium Declarations/Bylaws which were in conflict with the requirements of the Section 811 program.

50. Regulation: 24 CFR 891.165.

Project/activity: BCLT, Burlington, Vermont (Project Number: 024–HD024/VT36Q961001); Randolph Neighborhood, Randolph, Vermont (Project Number: 024–EE034/VT36S961002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Commissioner.

Date granted: August 24, 1999.

Reason waived: BCLT's delay in the submission of the firm application is primarily attributed to time needed to negotiate with the general contractor regarding the contract price. Randolph

Neighborhood's delay in closing is due to their efforts to identify other sources of funds needed to meet their cash requirement.

51. Regulation: 24 CFR 891.165.

Project/activity: Anointed Acres Housing Development, Greensboro, North Carolina (Project Number: 053–EE069/NC19–S971–002).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: August 24, 1999.

Reason waived: Additional time was required for the owner to amend its firm commitment application and to resolve a title problem.

52. Regulation: 24 CFR 891.165.

Project/activity: Ralston Mercy Douglas House, Philadelphia, Pennsylvania (Project Number: 034–EE061/PA26–S961–005).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 3, 1999.

Reason waived: Additional time was needed by HUD to review the closing documents.

53. Regulation: 24 CFR 891.165.

Project/activity: Summerdale Court, Clariton, Allegheny County, Pennsylvania (Project Number: 033–HD039/PA28Q971001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 10, 1999.

Reason waived: Delays were caused as a result of the Sponsor's request for zoning variances, and the resulting from the adjacent property owners.

54. Regulation: 24 CFR 891.165.

Project/activity: Citrus Gardens, Orlando, Orange County, Florida (Project Number: 067–EE082/FL29–S971–008); Goodwill Industries, St. Petersburg, Florida (Project Number: 067–HD054/FL29–Q971–008); Bethel Towers, Tallahassee, Florida (Project Number: 067–EE016/FL29–S971–002); Cape Coral Home, Cape Coral, Florida (Project Number: 066–HD038/FL29–Q971–005); Matthew's Corner, Tampa, Florida (Project Number: 067–HD053/FL29–Q971–007).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 13, 1999

Reason waived: Citrus Gardens experienced delays due to deficiencies in their Firm Commitment Application and their efforts to resolve issues with the City of Orlando in order to obtain a building permit. Bethel Towers' delays were caused by efforts to correct deficiencies in the Firm Commitment Application including resolving a cash shortage. Goodwill Industries' closing has been delayed because they were forced to seek an alternate site. Cape Coral Home's delays have been caused by their inexperience with development activities and the General Contractor having revised his cost. Matthew's Corner delays occurred as the Owner tried to obtain approval from the City of Tampa for the project to have access from the road, and in obtaining a clarification of the site's legal description.

55. Regulation: 24 CFR 891.165.

Project/activity: VOA Riverside 10, Fort Worth, Texas (Project Number: 113–HD015–WPD/TX21–Q971–001).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 22, 1999.

Reason waived: Delays occurred because the owner was forced to change sites. The change in sites was necessary because the owner was not able to obtain proper zoning due to neighborhood opposition.

56. Regulation: 24 CFR 891.165.

Project/activity: ARC Housing, Milwaukee, Wisconsin (Project Number: 075–HD049–WDD/W139–Q961004).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 22, 1999.

Reason waived: Project has not closed due to architectural problems that have to be resolved.

57. Regulation: 24 CFR 891.165.

Project/activity: Royale Gardens Residences, Chicago, Illinois (Project Number: 071–EE125/IL06–S961–016).

Nature of requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.165 provides that the duration of the fund reservation for a capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: September 23, 1999.

Reason waived: Additional time is needed for the Sponsor to secure secondary financing to cover additional construction costs.

For item 58, waiver granted for 24 CFR part 891, contact: Frank W. Parker, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3730. Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

58. Regulation: 24 CFR 891.205 and 410(c).

Project/activity: The Buffalo Multifamily HUB requested an age waiver for the Henderson School Apartments, Henderson, New York, Project Number: 014–EE033/NY–06–S921–011.

Nature of requirement: 24 CFR 891.205 defines the term ''Elderly person'' as a household of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: June 30, 1999.

Reasons waived: The waiver was granted because of sustained high vacancy rates and indications of a soft market for VLI families in the area. The admission income limits were requested to be changed from 50 percent of median income (VLI) to 80 percent of median (LI) to sustain occupancy and maintain project viability.

III. Waivers Granted by the Office of Public and Indian Housing

For items 59 through 63, waivers granted for 24 CFR part 761, contact: Sonia Burgos, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4206, Washington, DC 20410; telephone (202) 708–1197 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

59. Regulation: 24 CFR 761.30(b).

Project /activity: Alma City Housing Authority; Public Housing Drug Elimination Program (PHDEP) Grant #GA06DEP1330196.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 9, 1999.

Reason waived: The housing authority has experienced changes in administrative personnel, including the Executive Director. These changes caused a reduced staff. Because of this, drawdowns were not made in a timely manner from the Line of Credit and Control system.

60. Regulation: 24 CFR 761.30(b).

Project/activity: Calhoun Housing Authority; Public Housing Drug Elimination Program (PHDEP) Grant #GA06DEP1190197.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 12, 1999.

Reason waived: The housing authority requested a six month extension on the ending date of the grant with no changes in the budget line items, to expend funds that would pay salaries at a Day Care Center and the After School Program. HUD determined there was good cause to grant this waiver of the regulation.

61. Regulation: 24 CFR 761.30(b).

Project/activity: Springfield Metropolitan Housing Authority; Public Housing Drug Elimination Program (PHDEP) Grant #OH16DEP02100196.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 12, 1999.

Reason waived: The PHA experienced poor management and was placed on the troubled list. New management and a new Board of Commissioners have taken over and are working to correct these problems. The PHA requested to reprogram PHDEP funds for law enforcement activity.

62. Regulation: 24 CFR 761.30(b).

Project/activity: Romulus Housing Commission; Public Housing Drug Elimination Program (PHDEP) Grant #MI28DEP0720197.

Nature of requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 13, 1999.

Reason waived: The PHA grant coordinator left for another job and did not inform the PHA of this. The Executive Director of the PHA attempted to manage the grant. However, her workload inhibited this activity. The security lighting equipment was not obtained in a timely fashion and the original budget for the security lighting was underestimated. The PHA requested a budget revision to fund the security lighting.

63. Regulation: 24 CFR part 761.

Project/activity: Public Housing Drug Elimination Program (PHDEP) Grant #CA01DEP0010198.

Nature of requirement: Waiver of 24 CFR part 761 relative to Law Enforcement Service Agreement and Policy Manual.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: September 17, 1999.

Reason waived: The PHA has not successfully executed a written Memorandum of Understanding between the local police department and a private security contractor. The PHA utilizes a pool of private security contractors who are governed by State Law in lieu of individual policy manuals, which is peculiar to California.

For Item 64, waiver granted for 24 CFR Part 982, contact: Gerald Benoit, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0477 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

64. Regulation: 24 CFR 982.303(b)(1).

Project/activity: Housing Authority of El Dorado County, California; Section 8 Rental Voucher Program.

Nature of requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: September 16, 1999.

Reason waived: Approval of the waiver provided the voucher holder an additional 60 days to seek housing due to a lease-up delay.

For Item 65, waiver granted for 24 CFR part 990, contact: Joan DeWitt, Director, Funding and Financial Management Division, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4216,

Washington, DC 20410; telephone (202) 708–1872 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

65. Regulation: 24 CFR 990.107(f) and 990.109.

Project/activity: Housing Authority of Elgin, IL.

Nature of requirement: Under 24 CFR 990, the Performance Funding System (PFS) energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of Elgin has both PHA-paid and tenant-paid utilities. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The PHA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 20, 1999.

Reason waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of Elgin requested a waiver based on the same approved methodology. The waiver permits the PHA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

For items 66 through 71, waivers granted for 24 CFR part 1000, contact: Tracy Outlaw, National Office of Native American Programs, U.S. Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

66. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Santee Sioux Tribe (SST) to accept the late submittal of the Indian Housing Plan (IHP) from the SST for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: Rain and severe flooding created an emergency situation on the reservation and every available person from the tribe was needed to assist fellow tribal members. Neither the tribe nor the housing authority held meetings during that time and, therefore, the IHP could not be reviewed and approved.

67. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Pit River Tribe to accept the late submittal of the IHP from the Pit River Tribe for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: Pit River is a small tribe in California that has experienced difficulty in understanding the requirements of NAHASDA and feels that the information provided has been confusing and has caused misunderstanding about the Tribal calendar year versus HUD's fiscal year (FY). Therefore, the tribe submitted its Annual Performance Report (APR) instead of the IHP with the presumption that the requirements had been met.

68. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Paskenta Band of Nomlaki Indians to accept the late submittal of the IHP from the Paskenta Band of Nomlaki Indians for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: the Paskenta band of Nomlaki Indians is a small tribe that relied on a consultant to submit its IHP this Fiscal Year. The tribe received assurance from the consultant that the IHP would be submitted by the deadline. However, the tribe was unaware that the IHP was submitted after the deadline until receiving a call from the Southwest ONAP.

69. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Cortina Band of Indians to accept the late submittal of the IHP from the Cortina Band of Indians for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 11, 1999.

Reason waived: the Cortina Band informed the Southwest ONAP that the water heater in the tribal office broke in the middle of the night and flooded the office and damaged books and records. All the work that was done to prepare the IHP was destroyed. The documents were re-created as quickly as possible, but had to be submitted late.

70. Regulation: 24 CFR 1000.214.

Project/activity: A request was made by the Nottawaseppi Huron Band of Potawatomi (NHBP) for the Department to accept the late submittal of the IHP from the NHBP for processing.

Nature of requirement: IHPs must initially be sent by the recipient to the Area ONAP no later than July 1.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: August 27, 1999.

Reason waived: Two factors contributed to the failure of the NHBP in submitting the IHP in a timely manner: (1) The tribal government and housing authority have been undergoing changes and a reorganization; and (2) the housing authority has only one full-time staff person affecting the ability of the recipient to meet all new NAHASDA requirements.

71. Regulation: 24 CFR 1000.327(b).

Project/activity: A request was made by the Aniak Native Community to waive the tribe/Tribally Designated Housing Entity (TDHE) regulatory notification requirement so that it could submit an IHP to receive formula funding for Fiscal Year 1998. The tribe was undergoing a transition in leadership and tribal members were at the peak of subsistence activities which delayed their preparation and submission of an IHP.

Nature of requirement: The regulation establishes the deadline for notification on whether an IHP will be submitted. By September 15 of each year, each Indian tribe in Alaska not located on a reservation, including each Alaska Native Village, regional Indian tribe, and regional corporation, or its TDHE must notify HUD in writing whether it or its TDHE intends to submit an IHP.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date granted: July 20, 1999.

Reason waived: Based on the information and the documentation that was received, the Department believed

that there was good cause to waive the notification requirements of 24 CFR 1000.327(b).

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LIST OF PUBLIC LAWS

This is a completes the listing of public laws enacted during the first session of the 106th of Congress. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 1180/P.L. 106–170

Ticket to Work and Work Incentives Improvement Act of 1999 (Dec. 17, 1999; 113 Stat. 1860)

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