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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–075–4]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to remove the regulated portion of San Diego and Riverside Counties, CA, from the list of areas regulated because of the Mexican fruit fly, and to remove California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California and that restrictions on the interstate movement of regulated articles from California are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: This interim rule was effective June 7, 2000. We invite you to comment on this docket we will consider all comments that we receive by August 14, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–075–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–075–4.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Wilmer E. Snell, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Regulated areas are listed in § 301.64–3(c).

In an interim rule effective September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52211–52212, Docket No. 99–075–1), we quarantined the State of California and designated a portion of San Bernardino and Riverside Counties as a regulated area because that area had been found to be infested with the Mexican fruit fly. In a second interim rule, effective December 14, 1999, and published in the **Federal Register** on December 21, 1999 (64 FR 71267–71270, Docket No. 99–075–2), we amended the Mexican fruit fly regulations by adding a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly. In a third interim rule, effective April 12, 2000, and published in the **Federal Register** on April 18, 2000 (65 FR 20705–20706, Docket No. 99–075–3), we amended the Mexican fruit fly regulations by removing the regulated portion of San Bernardino and Riverside Counties, CA, from the list of areas regulated because of the Mexican fruit fly.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from San Diego and Riverside Counties, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on October 28, 1999.

Since then, no evidence of Mexican fruit fly infestations has been found in this area, and we have determined that the Mexican fruit fly no longer exists in San Diego and Riverside Counties. Therefore, we are removing this area from the list of areas in § 301.64–3(c) regulated because of the Mexican fruit fly. Because we have determined that the Mexican fruit fly no longer exists in California, we are removing California from the list of States quarantined because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the public. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could be spread to noninfested areas of the United States. Since this situation no longer exists, the continued regulated status of this area would impose unnecessary restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are

making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations to remove the regulated portion of San Diego and Riverside Counties, CA, from the list of areas regulated because of the Mexican fruit fly, and to remove California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California and that restrictions on the interstate movement of regulated articles from California are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all 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.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–3 [Amended]

2. In § 301.64–3, paragraph (c) is amended by removing the entry for ''California'' and the description of the regulated area for San Diego and Riverside Counties, CA.

Done in Washington, DC, this 7th day of June 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–14845 Filed 6–12–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE159; Special Conditions No. 23–103–SC]

Special Conditions: Cessna Models; Diamond Model; Mooney Models; Piper Models; Raytheon Models; Airplanes Modified by Installation of Teledyne Continental Motors Full Authority Digital Engine Control (FADEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. These airplanes as modified by Teledyne Continental Motors will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Randy Griffith, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri 64106; 816–329–4126, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2000, Teledyne Continental Motors applied for supplemental type certificates for the installation of engines that use an electronic engine control system in place of the hydromechanical control system for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R,320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. Affected airplane models are currently approved under the following Type Certificate Numbers:

Model	Type certificate No.
Cessna Models 172/K/L/M/N/P	3A12
Cessna Models 177/A/B	A13CE
Cessna Model 177RG	A20CE
Cessna Models 180/E/F/G/H/J/K	5A6
Cessna Models 182/E/F/G/H/J/K/L/M/N/P/Q/R.	3A13
Cessna Models 185/A/C/D/E/F	3A24
Cessna Models 188/A/B/C	A9CE
Cessna Models P206/A/B/C/D/E, U206A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E.	A4CE

Model	Type certificate No.
Cessna Models 207/A, T207/A	A16CE
Cessna Models 210/K/L/M/N/R, T210/K/L/M/N/R.	3A21
Cessna Model 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R.	3A10
Cessna Models 320/A/B/C/D/E/F/–1, 340/A.	3A25
Cessna Model 337/A/B/C/D/E/F/G/H.	A6CE
Cessna Models 401/A/B, 411/A, 414/A, 421/A/B/C.	A7CE
Diamond Model DA20–C1	TA4CH
Mooney Models M20/C/D/E/F/J/K/R	2A3
Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T.	2A13
Piper Model PA–34–200/–200T/–220T.	A7SO
Piper Model PA–46–310P/–350P ...	A25SO
Raytheon Models F33, V35, A36 ...	3A15
Raytheon Models 58, 95–C55, D55, E55.	3A16
Raytheon Model 58P	A23CE

All the airplanes are small, normal category airplanes powered with either single or dual reciprocating engines. The modification to the airplanes involves replacement of the engine with a new engine model that incorporates an electronic engine control system with full engine authority capability. The new engine model is accomplished with either an amended type certificate to the engine if the engine is a Teledyne Continental engine or a supplemental type certificate to the engine if the engine is a Lycoming engine. The airframe systems will also be modified as necessary to accommodate the engine's new control system.

Type Certification Basis

Under the provisions of § 21.101, Teledyne Continental Motors must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Numbers 3A12, A13CE, A20CE, 5A6, 3A13, 3A24, A9CE, A4CE, A16CE, 3A21, 3A10, 3A25, A6CE, A7CE, TA4CH, 2A3, 2A13, A7SO, A25SO, 3A15, 3A16, A23CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis'' and can be found in the Type Certificates.

If the Administrator finds that the applicable airworthiness regulations (14 CFR part 23) do not contain adequate or appropriate safety standards for affected airplane models because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes will incorporate an engine that includes an electronic control system with full engine authority capability. The airframe systems will also be modified as necessary to accommodate the engine's new control system.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system developed by Teledyne Continental Motors will perform functions in which a failure may cause an unsafe condition, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though each control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (for example, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting) Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes modified by Teledyne Continental Motors by installation of an electronic engine control system to

provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–41.

Discussion of Comments

On April 4, 2000 (65 FR 17613), the FAA published notice of proposed special conditions No. 23–00–01–SC for Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes as modified by Teledyne Continental Motors. Should Teledyne Continental Motors apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Numbers 3A12, A13CE, A20CE, 5A6, 3A13, 3A24, A9CE, A4CE, A16CE, 3A21, 3A10, 3A25, A6CE, A7CE, TA4CH, 2A3, 2A13, A7SO, A25SO, 3A15, 3A16, A23CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. It is not a rule of general applicability. It is only applicable to airplanes being modified by Teledyne Continental Motors to include this engine system.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 49.

The Special Conditions

1. High Intensity Radiated Fields (HIRF), Protection. In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs functions in which a failure may cause an unsafe condition to the airplane, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform functions in which a failure may cause an unsafe condition.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform functions in which a failure may cause an unsafe condition are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency		
Field strength (volts per meter)	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform functions in which a failure may cause an unsafe condition can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

2. Electronic Engine Control System. The installation items that affect the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–41.

Issued in Kansas City, Missouri on May 25, 2000.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14860 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–32–AD; Amendment 39–11760; AD 2000–11–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45/50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company CF6–45/50 series turbofan engines. This AD requires initial and repetitive inspections for cracks in the stage 14 high pressure compressor (HPC) disk lock slots, and removal from service of certain disks, at the first piece-part level or HPC rotor disassembly level exposure, after 6,000 cycles since new (CSN). This amendment is prompted by reports of stage 14 HPC disk lock slot cracks discovered during shop fluorescent penetrant inspections. The actions specified by this AD are intended to prevent stage 14 HPC disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective date August 14, 2000.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 14, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

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 General Electric Company CF6–45/50 series turbofan engines was published in the **Federal Register** on October 26, 1999 (64 FR 57606). That action proposed to require initial and repetitive inspections for cracks in the stage 14 high pressure compressor (HPC) disk lock slots, and removal from service of certain disks, at the first piece-part level or HPC rotor disassembly level exposure, after 6,000 cycles since new (CSN).

Comments Received

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

Cost Impact

Two comments suggest that the financial impact is not representative of the replacement cost of the disk since the disk is no longer in production or stocked and the replacement cost of the stage 11–14 spool shaft is more than $250,000. The FAA does not agree. Over the course of the inspection program, the availabilty of HPC rear shafts, and not the availability of stage 14 disks, is expected to be the limiting factor, requiring the installation of the stage 11–14 spool shaft. In addition, the estimate of economic impact was based on the lost life of the stage 14 disk only.

Reporting Period

One comment suggests that the time limit for reporting the results of inspections that equal or exceed the reject criteria be increased from within five days of the inspection to within ten days of the inspection. The FAA does not agree. Based on the potential criticality of a reject finding, five days is considered reasonable and is consistent with reporting requirements in ADs dealing with other critical rotating parts. Carriers can make arrangements with inspection facilities to report reject findings directly to the FAA if reporting to the carrier first would cause a delay in reporting to the FAA. Reports can be made to the FAA by fax on weekends and holidays. The FAA has included the telephone and fax numbers for the ECO in paragraph (h) of the Compliance Section.

Consistent Wording

One comment asks that the FAA use consistent wording with regard to the term ''rotor module level exposure.'' The FAA agrees. The term ''rotor module level exposure'' has been changed to ''rotor disassembly level exposure'' in the Summary and in paragraphs (f) and (i) (1) of the Compliance Section.

Replacement of the Fan Forward Case

One comment requests that the FAA add a provision for the definition of an engine shop visit to paragraph (i) for ''Introduction of an engine into a shop solely for replacement of the fan forward case.'' The FAA agrees. To be consistent with AD 99–24–15, the 3–9 spool AD, paragraph (i)(3)(iv), ''Introduction of an engine into a shop solely for replacement of the fan forward case,'' has been inserted into the compliance section of this AD and the paragraph previously numbered (I) (3) (iv) has been renumbered (i)(3)(v).

Effective Date

One comment notes that the effective date should be changed so that it is consistent with the schedule provided by the service bulletin. The FAA does not agree. The rulemaking process is a formal legal course of action that does not include provisions for coordinating effective dates with manufacturers' service bulletins.

Support of the AD as Written

Three comments support the AD as written.

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 described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 1,538 engines of the affected design in the worldwide fleet. The FAA estimates that 460 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,600 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,263,200.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does 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. Accordingly, the

FAA has not consulted with state authorities prior to publication of this rule.

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 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:

2000–11–12 General Electric Company: Amendment 39–11760. Docket 98–ANE–32–AD.

Applicability: General Electric Company (GE) Model CF6–45/50 series turbofan engines, installed on but not limited to Airbus Industrie A300 series, Boeing Company 747 series, and McDonnell Douglas Corporation DC–10 series airplanes

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (j) 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 a stage 14 high pressure compressor (HPC) disk failure, which could result in uncontained engine failure and damage to the aircraft, accomplish the following:

Inspections

(a) Perform initial inspections of HPC stage 14 disks, part numbers (P/N's) 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with serial number (SN) prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 6,500 cycles since new (CSN) or less on the effective date of this AD before accumulating 9,800 CSN.

(2) Inspect disks with more than 6,500 CSN on the effective date of this AD no later than the next engine shop visit (ESV) after the effective date of this AD or before accumulating an additional 3,300 cycles-in-service (CIS) after the effective date of this AD, whichever occurs first.

(b) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with SN prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 9,800 CSN at the time of the last inspection, perform repetitive inspections no later than 9,800 CSN or before accumulating 3,300 cycles since last inspection (CSLI), whichever occurs later.

(2) For disks with 9,800 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3,300 CSLI.

(c) Perform initial inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 4,200 CSN or less on the effective date of this AD before accumulating 7,500 CSN.

(2) Inspect disks with more than 4,200 CSN but less than 9,000 CSN on the effective date of this AD at the next ESV after the effective date of this AD, before accumulating an additional 3,300 CIS after the effective date of this AD, or before accumulating 11,000 CSN, whichever occurs first.

(3) Inspect disks with 9,000 CSN or greater on the effective date of this AD, at the next ESV after the effective date of this AD, or before accumulating an additional 2,000 CIS after the effective date of this AD, whichever occurs first.

(d) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 7,500 CSN at the time of the last inspection, perform repetitive inspections no later than 7,500 CSN or before accumulating 3,300 CSLI, whichever occurs later.

(2) For disks with 7,500 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3300 CSLI.

Removal From Service

(e) Remove from service prior to further flight stage 14 HPC disks that equal or exceed the reject criteria established by GE CF6–50 ASB 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999.

(f) Remove from service, HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, with greater than 6,000 CSN after the effective date of this AD, at the next piece-part level exposure or at the next HPC rotor disassembly level exposure after the effective date of this AD.

Terminating Action

(g) Replacement of the stage 14 HPC disk, P/N's 9080M34P03, 9080M34P04, 9080M34P05, 9349M91P04, with a stage 11–14 spool shaft is terminating action for the inspection requirements of this AD.

Reporting Requirements

(h) Report the results of inspections that equal or exceed the reject criteria within five days of the inspection to: Manager, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone, (781) 238–7141, fax, (781) 238–7199. The following information must be included in the report:

(1) HPC Stage 14 rotor disk P/N,
(2) HPC Stage 14 rotor disk SN,
(3) HPC Stage 14 rotor disk CSN,
(4) HPC Stage 14 rotor disk CSLI, and
(5) Date and location of inspection.

Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

Definitions

(i) For the purpose of this AD, the following definitions apply:

(1) HPC Rotor disassembly occurs if any of the HPC Rotor bolted flange joints are separated, such as the Stage 2 joint to accomplish the Stage 3–9 Spool inspection.

(2) Piece-part exposure is defined as disassembly and removal of the stage 14 disk from the HPC rotor structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the disk.

(3) An engine shop visit is defined as the introduction of an engine into a shop when a major engine flange is separated. The following maintenance actions are not considered engine shop visits for the purpose of this AD:

(i) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk;

(ii) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame;

(iii) Introduction of an engine into a shop solely for replacement of the Accessory Gearbox or Transfer Gearboxes;

(iv) Introduction of an engine into a shop solely for replacement of the Fan Forward Case.

(v) Introduction of an engine into a shop for any combination of exceptions specified in paragraphs (i)(3)(i) through (i)(3)(iv);

Alternative Methods of Compliance

(j) 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, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Incorporation by Reference

(k) The inspections shall be done in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 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 General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

Special Flight Permit

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

Effective Date of This AD

(m) This amendment becomes effective on August 14, 2000.

Issued in Burlington, Massachusetts, on May 25, 2000.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–14017 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–138–AD; Amendment 39–11770; AD 2000–10–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2000–10–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 767 series airplanes by individual notices. This AD requires a one-time inspection to determine whether certain bolts are installed in the side load underwing fittings on both struts, and various follow-on actions, if necessary. This action is prompted by a report that two fractured bolts and one cracked bolt were found in the side load underwing fittings. The actions specified by this AD are intended to detect and correct cracking or fracturing of the tension bolts on the side load underwing fittings on the strut, which would eventually result in loss of the strut.

DATES: Effective June 19, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–10–51, issued May 18, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 18, 2000, the FAA issued emergency AD 2000–10–51, which is applicable to certain Boeing Model 767 series airplanes.

On May 15, 2000, the FAA received a report indicating that an operator found two fractured bolts and one cracked bolt in the side load underwing fittings of a Model 767–200 series airplane. On the affected airplane, both tension bolts on the outboard side load underwing fitting were completely fractured, and one bolt on the inboard side load underwing fitting was cracked. The affected airplane had accumulated 65,759 total flight hours and 17,021 total flight cycles. The cracking and fracturing of the tension bolts is due to stress corrosion. The tension bolts are made of H–11 steel material, which service history has shown to be susceptible to stress corrosion. Fracture of the tension bolts in the side load underwing fittings, if not corrected, would eventually result in loss of the strut.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, and Revision 1, dated May 18, 2000, which describes procedures for a one-time inspection to determine whether H–11 steel tension bolts are installed in the side load underwing fittings on both struts. If any H–11 bolts are found, or if the type of bolt cannot be determined, the alert service bulletin also describes procedures for repetitive ultrasonic inspections to detect cracking or fracturing of the tension bolts in the side load underwing fittings on both struts, and corrective action, if necessary. Corrective action involves replacement of both tension bolts in the affected side load underwing fitting with new, improved bolts. The new, improved

bolts are made of Inconel, which is more resistant to stress corrosion cracking than H–11 steel. Replacement of all H–11 steel tension bolts in the side load underwing fittings with new, improved bolts, as described in the alert service bulletin, eliminates the need for the repetitive inspections.

Explanation of Applicability

This AD applies to Model 767 series airplanes having line numbers 1 through 230 inclusive. The airplane manufacturer's records show that airplanes having line numbers 1 through 162 inclusive are likely to have H–11 steel tension bolts installed in the side load underwing fittings on the struts. However, the FAA has determined that it is possible that airplanes with line numbers 163 through 230 inclusive also have H–11 steel bolts installed. Therefore, this AD requires a one-time inspection on all Model 767 series airplanes with line numbers 1 through 230 inclusive to determine whether H–11 steel tension bolts are installed. For airplanes having line numbers 1 through 162 inclusive, this AD requires the initial inspection within 5 days. For airplanes having line numbers 163 through 230 inclusive, this AD requires the initial inspection within 10 days. Also, for airplanes having line numbers 163 through 230 inclusive on which H–11 steel bolts are found to be installed, this AD requires that operators report this fact to the FAA.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2000–10–51 to require a one-time inspection to determine whether H–11 steel tension bolts are installed in the side load underwing fittings on both struts. If an H–11 steel tension bolt is installed, or if the type of bolt cannot be determined, this AD requires repetitive ultrasonic inspections to detect cracking or fracturing of the tension bolts in the side load underwing fittings on both struts, and corrective action, if necessary. For certain airplanes, this AD also requires additional inspections to detect discrepancies of adjacent structure. For certain other airplanes, as described previously, this AD requires that operators report results of inspection findings to the FAA. This AD also provides an optional terminating action for the repetitive inspections described previously. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Difference Between Alert Service Bulletin and This AD

Operators should note that the alert service bulletin recommends that the one-time inspection to determine whether H–11 steel tension bolts are installed be performed within 5 days after receipt of the alert service bulletin. However, as described previously, this AD requires that the inspection be accomplished within 5 days after the effective date of this AD only on airplanes having line numbers 1 through 162 inclusive. On airplanes having line numbers 163 through 230 inclusive, this AD requires that this inspection be accomplished within 10 days.

Operators also should note that the alert service bulletin specifies that, if both tension bolts on one fitting are found cracked or fractured, the manufacturer must be contacted for additional inspection requirements to detect discrepancies of adjacent structure. This AD requires such additional inspection requirements to be accomplished in accordance with a method approved by the FAA.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the replacement of all H–11 steel tension bolts in the side load underwing fittings with new, improved bolts, which would constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the replacement would be sufficiently long so that notice and opportunity for prior public comment would be practicable.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on May 18, 2000, to all known U.S. owners and operators of Boeing Model 767 series airplanes having line numbers 1 through 230 inclusive. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–138–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, 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:

2000–10–51 Boeing: Amendment 39–11770. Docket 2000–NM–138–AD.

Applicability: Model 767 series airplanes, line numbers (L/N) 1 through 230 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 (g) 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 cracking or fracturing of the tension bolts on the side load underwing fittings on the strut, which would eventually result in loss of the strut, accomplish the following:

One-Time Inspection

(a) At the applicable time specified in paragraph (a)(1) or (a)(2) of this AD, perform a one-time inspection of the tension bolts in the side load underwing fittings on both struts to determine whether tension bolts made of H–11 steel are installed, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000. If the inspection shows conclusively that no H–11 steel bolt is installed, no further action is required by this AD.

(1) For airplanes having L/N 1 through 162 inclusive: Inspect within 5 days after the effective date of this AD.

(2) For airplanes having L/N 163 through 230 inclusive: Inspect within 10 days after the effective date of this AD.

Repetitive Inspections

(b) If any H–11 steel bolt is found during the inspection required by paragraph (a) of this AD, or if the type of bolt cannot be determined: Prior to further flight, perform an ultrasonic inspection to detect cracking or fracturing of the tension bolts in the side load underwing fittings on both struts, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000. Repeat the inspection thereafter at intervals not to exceed 500 flight hours or 300 flight cycles, whichever occurs later.

Replacement

(c) If any cracked or fractured bolt is found during any inspection required by paragraph (b) of this AD, prior to further flight, replace both tension bolts in the affected side load underwing fitting with new, improved bolts, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000.

Additional Inspection Requirements

(d) If both tension bolts in one side load underwing fitting are found cracked or fractured during any inspection required by paragraph (b) of this AD, prior to further flight, perform inspections to detect discrepancies of adjacent structure in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For an inspection method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Reporting Requirement

(e) For airplanes having L/N 163 through 230 inclusive on which an H–11 bolt is found installed, or on which the type of bolt cannot be determined during the inspection required by paragraph (a) of this AD: Within 48 hours after performing the inspection required by paragraph (b) of this AD, submit a report of findings to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the type of bolt found and the airplane serial number. 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.

Optional Terminating Action

(f) Replacement of all H–11 steel tension bolts in the side load underwing fittings on both struts with new, improved bolts, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000, constitutes terminating action for this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 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

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

Incorporation by Reference

(i) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Boeing Alert Service Bulletin 767–57A0074, Revision 1, dated May 18, 2000. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

Effective Date

(j) This amendment becomes effective on June 19, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–10–51, issued on May 18, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14314 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–380–AD; Amendment 39–11768; AD 2000–11–20]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes, that requires revising the Aircraft Log Book to correct the airplane Production Modification List; performing an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII); and revising the Airworthiness Limitations List of the Approved Maintenance Plan to include the BII requirements. This amendment also requires, for certain airplanes, repetitive ultrasonic bond inspections to detect disbonding of airplane skin panels, 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 bonded skin panels to go undetected, which could result in failure of the bonded skin panels, and consequent loss of controllability of the airplane.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, 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: Franco Pieri, 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) 256–7526; 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 DHC–8–100 and –300 series airplanes was published in the **Federal Register** on March 31, 2000 (65 FR 17206). That action proposed to require revising the Aircraft Log Book to correct the airplane Production Modification List; performing an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII); and revising the Airworthiness Limitations List of the Approved Maintenance Plan to include the BII requirements. That action also proposed to require, for certain airplanes, repetitive ultrasonic bond inspections to detect disbonding of airplane skin panels, 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 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required revisions to the Aircraft Log Book, Approved Maintenance Plan, and inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the actions required by this AD on U.S. operators is estimated to be $2,460, or $60 per airplane.

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

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:

2000–11–20 Bombardier Inc. (Formerly de Havilland, Inc.): Amendment 39–11768. Docket 98–NM–380–AD.

Applicability: Model DHC–8–100 and –300 series airplanes, serial numbers 215 through 341 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 (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 damage to bonded skin panels to go undetected, which could result in failure of the bonded skin panels, and consequent loss of controllability of the airplane, accomplish the following:

Revision to Aircraft Log Book and Airworthiness Limitations List

(a) Within 30 days after the effective date of this AD, perform the actions required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Revise the Aircraft Log Book to correct the airplane Production Modification List in accordance with the Accomplishment Instructions in Part A of Section III of Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998.

(2) Perform an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII) in accordance with the Accomplishment Instructions in Part B of Section III of Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998.

(3) Revise the Airworthiness Limitations List of the Approved Maintenance Plan by inserting the bonding integrity inspections identified as de Havilland Maintenance Task 5500/01 and de Havilland Maintenance Task 5700/01 into the Airworthiness Limitations List. Except as provided by paragraph (e) of this AD: After the actions specified in paragraph (a)(3) of this AD have been accomplished, no alternative replacement times or structural inspection intervals may be approved for the bonded panels of the empennage and wings specified in de Havilland Maintenance Task 5500/01 and de Havilland Maintenance Task 5700/01.

On-Condition Repetitive Inspections

(b) For airplanes on which the bonded skin panels require BII's, as determined in paragraph (a)(2) of this AD: At the next required maintenance visit, but no later than 12 months after the effective date of this AD, perform an initial ultrasonic bond inspection to detect disbonding of the skin panels, in accordance with Part 5, sections 55–00–01 and/or 57–30–01, of Bombardier Production Support Manual (PSM) 1–8–7A, dated December 15, 1998 (for Model DHC–8–100 series airplanes); or Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–83–7A, dated April 30, 1999 (for Model DHC–8–300 series airplanes); as applicable. Thereafter, repeat the ultrasonic inspection at the interval specified in the applicable PSM.

On-Condition Repair

(c) Except as provided by paragraph (d) of this AD, if any disbonding is detected during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–8–7A, dated December 15, 1998 (for Model DHC–8–100 series airplanes); or Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–83–7A, dated April 30, 1999 (for Model DHC–8–300 series airplanes); as applicable.

(d) If any disbonding is detected during any inspection required by paragraph (b) of this AD; and the applicable service information specifies to contact Bombardier for appropriate action: 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. For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

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, 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 2: 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

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

Incorporation by Reference

(g) The Aircraft Log Book revision required by paragraph (a)(1) and the inspection required by paragraph (a)(2) of this AD shall be done in accordance with Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, 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 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–31, dated September 1, 1998.

(h) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14313 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–313–AD; Amendment 39–11767; AD 2000–11–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes, that requires repetitive inspections to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments, and replacement of any discrepant component with a new component. This amendment is prompted by reports of worn and damaged door latches and disconnect housings in the off-wing escape slide compartments. The actions specified by this AD are intended to ensure deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew. The actions specified by this AD are also intended to detect damaged disconnect housings in the off-wing escape slide compartments, which could result in unexpected deployment of an escape slide during maintenance, and consequent injury to maintenance personnel.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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: Jim Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

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 Boeing Model 767–200 and –300 series airplanes was published in the **Federal Register** on December 29, 1999 (64 FR 72967). That action proposed to require repetitive inspections to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments. If wear or damage is found, the action proposed to require replacement of these discrepant components with new components.

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 the Proposed Rule

Two commenters support the proposed rule and indicate that they are accomplishing the requirements of this AD on their airplanes. A third commenter offers no comment on the proposed rule.

Request To Revise Wording in Proposed Rule

One commenter requests that the FAA revise certain wording in the preamble and body of the proposed rule. The commenter's suggestions and rationale are as follows:

1. Revise statement of unsafe condition throughout the AD to state that the actions specified by this AD are intended to ''ensure deployment of an escape slide during an emergency evacuation and[,] additionally[,] in the case of the disconnect housing, to ensure the safety of mechanics during maintenance.'' The commenter states that a broken disconnect housing could result in unexpected inflation of an off-wing slide during maintenance.

2. Revise the ''Discussion'' section of the proposed rule to incorporate more details about the events that prompted this AD. Specifically, state that ''Worn or broken latches and broken disconnect housings have also been discovered during maintenance.''

3. Revise the ''Differences Between Proposed Rule and Alert Service Bulletin'' section to reference specific part numbers acceptable for installation.

4. Revise description of subject parts throughout the AD from ''worn and damaged door latches and disconnect housings of the off-wing escape slide compartments'' to ''worn and damaged door latches and broken disconnect housings in the off-wing escape slide compartments.'' The commenter states that, ''To date, there are no reports of 'worn' disconnect housings, only 'broken' ones.''

The FAA partially concurs with the commenter's requests. The FAA concurs with the commenter's suggested changes to the statement of unsafe condition described above in item 1. Accordingly, the FAA has revised the statement of unsafe condition in the ''Summary'' section of this final rule.

The FAA also concurs that the commenter's suggested changes described above in items 2. and 3. are accurate; however, these sections are not restated in the final rule; thus, no change to the final rule is necessary in this regard.

The FAA does not concur that any change is necessary to the description of subject parts, as described above in item 4. The FAA considers ''damage'' of the disconnect housings to include broken disconnect housings. However, the FAA does concur with the commenter's suggestion to revise the words ''of the off-wing escape slide compartments'' to ''in the off-wing escape slide compartments.'' This change has been made throughout this final rule.

Request To Reference Forthcoming Terminating Action

One commenter requests that the FAA revise the proposed rule to reference a terminating action. The commenter states that the airplane manufacturer will release a new service bulletin that describes procedures for replacing disconnect housings with new, improved disconnect housings. The commenter states that such replacement is intended to eliminate the need for the repetitive inspections of the disconnect housings that would be required by the proposed AD. (However, repetitive inspections of the latches would still be necessary.) The commenter also suggests changes to the cost impact information related to adding the terminating action.

The FAA does not concur with the commenter's request. To date, the FAA has not reviewed or approved the service bulletin referenced by the commenter. Considering the degree of urgency associated with addressing the subject unsafe condition, the FAA finds that it would be inappropriate to delay issuance of this final rule until the service bulletin has been approved. However, once the service bulletin and improved parts referenced by the commenter are available, the commenter may request approval of an alternative method of compliance, in accordance with paragraph (c) of this AD. No change to the final rule is necessary in this regard.

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

There are approximately 634 Model 767–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $43,380, or $180 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:

2000–11–19 Boeing: Amendment 39–11767. Docket 98–NM–313–AD.

Applicability: Model 767–200 and –300 series airplanes, as listed in Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998; certificated in any category; except Model 767 series airplanes that have undergone conversion to freighter configurations, and on which the off-wing escape system has been removed or deactivated.

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 (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 non-deployment of an escape slide during an emergency evacuation, which could slow down the evacuation of the airplane and result in injury to passengers or flightcrew; and to detect damaged disconnect housings in the off-wing escape slide compartments, which could result in unexpected deployment of an escape slide during maintenance, and consequent injury to maintenance personnel; accomplish the following:

Inspections

(a) Prior to the accumulation of 6,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

Note 2: Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998, allows repetitive inspections of a door latch having part number H2052–11 or H2052–115, provided that the latch is not worn or damaged. However, replacement of any latch having part number H2052–11 or H2052–115 with a new latch having part number H2052–13 is described as part of a modification of the escape slide compartment door latching mechanism that is specified in Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991. Accomplishment of that modification is required by AD 92–16–17, amendment 39–8327, and AD 95–08–11, amendment 39–9200. Therefore, operators should note that any latch having part number H2052–11 or H2052–115 found during an inspection required by paragraph (a) of this AD is already required to be replaced in accordance with AD 92–16–17 or AD 95–08–11, as applicable.

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with the Validation Copy of Boeing Alert Service Bulletin 767–25A0260, dated April 28, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Replacement

(b) If any part is found to be worn or damaged during the inspections performed in accordance with paragraph (a) of this AD, prior to further flight, replace the worn or damaged part with a new part, and perform an adjustment of the off-wing escape slide system, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998.

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 4: 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

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

Effective Date

(f) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14312 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–331–AD; Amendment 39–11769; AD 2000–11–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 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, A320, and A321 series airplanes, that requires a one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol, and corrective action, 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 failure of the spoiler servocontrol piston rod, which could result in reduced controllability of the airplane.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of July 18, 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 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 Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on December 22, 1999 (64 FR 71696). That action proposed to require a one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol, 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.

The Air Transport Association (ATA) of America, on behalf of two of its members, states that both members support the intent of the proposed AD. One member is already accomplishing the relevant service bulletin. The other member is carrying out the one-time inspection of the affected aircraft to ensure the correct spoiler servocontrols are installed on their aircraft.

Request to Revise the Compliance Time for the Corrective Actions

One commenter requests that the proposed AD be revised to allow more flexibility in accomplishing the corrective actions specified in the proposal. The commenter states that there will be times when replacement spoiler servos are unavailable due to the large number of spoiler servocontrol units that are affected in the Airbus fleet. With this in mind, the commenter suggests revising paragraph (a) of the proposed AD to read as follows:

''At the time specified in paragraph (a)(1) or (a)(2), accomplish the inspection and corrective action per SB A320–27–1127 or A320–27–1126 as applicable.''

The FAA does not concur. Discussions with the manufacturer have not identified a supply problem with the spoiler servocontrols. Additionally, sufficient time has elapsed since the issuance of the service bulletins and notice of proposed rulemaking (NPRM) for operators to make the necessary planning and logistical supply arrangements in advance in order to comply with this amendment. Therefore, no change has been made to the final rule.

Request to Revise the Compliance Time for the Inspection

One commenter requests that the proposed AD be revised to require the one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol to be accomplished within 18 months for Airbus Model A319 series airplanes. The commenter states that, the proposed AD specifies a fourteen times differential in the required compliance threshold (i.e., 2 months versus 28 months) between Airbus Model A320 and A319 series airplanes. The commenter questions this differential because Model A320 series airplanes have been in service longer with an accumulated average of 17,306 total flight hours than the Model A319 series airplanes, which have an accumulated average of approximately 4,014 total flight hours. Furthermore, the commenter states that there are approximately 2.3 times more Model A320 series airplanes in service as Model A319 and A321 series airplanes.

The FAA does not concur. Data provided by the manufacturer indicates that an autoland failure of a servocontrol on a Model A319 or A321 series airplane would result in a greater maximum transient deviation from the runway centerline and maximum transient bank angle without triggering the excessive deviation warning. Considering this factor, the FAA has determined that the compliance times specified in paragraphs (a)(1) and (a)(2) of the proposed AD represent the maximum time in which the affected airplanes could continue to operate without compromising safety. Therefore, no change has been made to the final rule.

Explanation of Change to the Proposal

The FAA notes that it is necessary to clarify that the general visual inspection required by paragraphs (a) and (b) of this AD may be accomplished in accordance with Airbus Service Bulletin A320–27–1126, dated April 26, 1999, or Revision 01, dated October 6, 1999. This clarification provides credit for those operators that may have previously accomplished the required action in accordance with that service bulletin.

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 described previously. 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 210 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $25,200, or $120 per airplane.

Should an operator be required to accomplish the modification, it will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. The cost of required parts would be free of charge. Based on these figures, the cost impact of the modification is estimated to be $240 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:

2000–11–21 Airbus Industrie: Amendment 39–11769. Docket 99–NM–331–AD.

Applicability: The following models, certificated in any category, excluding those on which Airbus Service Bulletin A320–27–1126, dated April 26, 1999 (for Model A319 and 321 series airplanes); or A320–27–1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); has been accomplished:

- Model A319 series airplanes, serial numbers (S/N) 0546 through 0972 inclusive;
- Model A320 series airplanes, S/N 0002 through 0842 inclusive, 0846 through 0859 inclusive, 0865, 0866, and 0872 through 0960 inclusive; and
- Model A321 series airplanes, S/N 0364 through 0974 inclusive.

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 (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 failure of the servocontrol piston rod, which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform a general visual inspection to determine the part number and serial number for the spoiler servocontrols, in accordance with Airbus Service Bulletin A320–27–1126, April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A319 and A321 series airplanes); or Airbus Service Bulletin A320–27–1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); as applicable. If the part number and serial number are identified in paragraph 2.B.(1)(b) of the Accomplishment Instructions of the applicable service bulletin, prior to further flight, perform applicable corrective actions (including removal, reidentification of the servocontrol, and replacement of the servocontrol with a modified part) as specified in the applicable service bulletin.

(1) For Model A319 and A321 series airplanes: Inspect within 2 months after the effective date of this AD.

(2) For Model A320 series airplanes: Inspect within 28 months after the effective date of this AD.

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.''

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a spoiler servocontrol having part number 31077–050, 31077–060, or 31077–110; and S/N 0001 to 3499, except those serial numbers excluded in paragraph 2.B.(1)(b)1 of the Accomplishment Instructions in Airbus Service Bulletin A320–27–1126, dated April 26, 1999, or Revision 01, dated October 6, 1999; unless that servocontrol has been inspected, and corrective actions have been performed, in accordance with the requirements of 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, 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

(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 actions shall be done in accordance with Airbus Service Bulletin

A320–27–1126, including Appendices 01 and 02, dated April 26, 1999; Airbus Service Bulletin A320–27–1126, Revision 01 including Appendices 01 and 02, dated October 6, 1999; Airbus Service Bulletin A320–27–1127, including Appendices 01 and 02, dated April 26, 1999; or Airbus Service Bulletin A320–27–1127, Revision 01 including Appendices 01 and 02, dated October 6, 1999; 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 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 4: The subject of this AD is addressed in French airworthiness directive 1999–362–139(B), dated September 8, 1999.

(f) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14311 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–128–AD; Amendment 39–11772; AD 2000–11–23]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, that requires an inspection to detect damage of the electrical bonding leads in specified locations of the fuel tanks, and replacement of any damaged

electrical bonding leads with serviceable electrical bonding leads. For certain airplanes, this amendment also requires modifying the fuel pipe couplings in specified locations of the fuel tank. 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 electrical arcing/discharge in the fuel tank due to damaged electrical bonding leads or inadequate electrical bonding of the fuel pipe couplings, which could result in fuel ignition and consequent uncontained rupture of the fuel tank.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 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 all Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on March 27, 2000 (65 FR 16151). That action proposed to require an inspection to detect damage of the electrical bonding leads in specified locations of the fuel tanks, and replacement of any damaged electrical bonding leads with serviceable electrical bonding leads. For certain airplanes, that action also proposed to require modifying the fuel pipe couplings in specified locations of the fuel tank.

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 116 airplanes of U.S. registry will be affected by this AD.

It will take between 70 and 80 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 between $487,200 and $556,800, or between $4,200 and $4,800 per airplane.

It will take between 77 and 103 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $104 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be between $547,984 and $728,944, or between $4,724 and $6,284 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:

2000–11–23 Airbus Industrie: Amendment 39–11772. Docket 99–NM–128–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing/discharge in the fuel tank due to damaged electrical bonding leads or inadequate electrical bonding of the fuel pipe couplings, which could result in fuel ignition and consequent uncontained rupture of the fuel tank, accomplish the following:

Inspection

(a) Within 36 months after the effective date of this AD, perform a one-time inspection to detect damage (i.e., breakage, fraying, abrasion damage, looseness of the outer metal braid protection in the end crimp, looseness of the outer metal braid protection on the bonding lead inner core, corrosion, or missing leads) of the electrical bonding leads in specified locations of the fuel tanks, in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–28–0072, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for

Model A300 series airplanes); A310–28–2128, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A310 series airplanes); or A300–28–6057, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A300–600 series airplanes); as applicable.

Note 2: Inspection of the area specified in paragraph (a) of this AD accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletins A300–28–0072, A310–28–2128, or A300–28–6057; all dated February 20, 1998; as applicable; is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Replacement

(b) If any electrical bonding lead is damaged, prior to further flight, replace the bonding lead with a serviceable bonding lead in accordance with the applicable service bulletin specified in paragraph (a) of this AD.

Modification

(c) For airplanes on which Airbus Industrie Modification 11847 (for Model A310 series airplanes) or 11848 (for Model A300/A300–600 series airplanes) has not been accomplished, within 36 months after the effective date of this AD, modify the fuel pipe couplings in the specified locations of the fuel tank in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–28–0073, Revision 01, dated October 01, 1998 (for Model A300 series airplanes); A310–28–2130, Revision 01, dated October 01, 1998 (for Model A310 series airplanes); or A300–28–6058, Revision 01, dated October 01, 1998 (for Model A300–600 series airplanes); as applicable.

Note 3: Modification of the fuel pipe couplings accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletins A300–28–0073, A310–28–2130, or A300–28–6058; all dated February 20, 1998; as applicable; is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Alternative Methods of Compliance

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

Note 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

(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.

Incorporation by Reference

(f) The actions shall be done in accordance with the following Airbus service bulletins, as applicable:

Service bulletin No.	Page No.	Revision level shown on page	Date shown on page
A300–28–0072, Revision 01, October 01, 1998	1–14	01	Oct. 01, 1998.
	Appendix 1		
	1–21, 23–25, 27, 29–36, 38–84, 88–95, 97–166	Original	Feb. 20, 1998.
	22, 26, 28, 37, 85–87, 96	01	Oct. 01, 1998.
	Appendix 2		
	1–54	Original	Feb. 20, 1998.
A310–28–2128, Revision 01, October 01, 1998	1–14	01	Oct. 01, 1998.
	Appendix 1		
	1–30, 32–83, 85–87, 89–95, 97–221, 223–226	Original	Feb. 20, 1998.
	31, 84, 88, 96, 222	01	Oct. 01, 1998.
	Appendix 2		
	1–56	Original	Feb. 20, 1998
A300–28–6057, Revision 01, October 01, 1998	1–14	01	Oct. 01, 1998.
	Appendix 1		
	1–18, 21–25, 27–29, 31, 33, 34, 36, 38, 40, 42, 44–78, 81–85, 87–89, 91, 93, 94, 96, 98–100, 102, 104–229, 231–234.	Original	Feb. 20, 1998.
	19, 20, 26, 30, 32, 35, 37, 39, 41, 43, 79, 80, 86, 90, 92, 95, 97, 101, 103, 230.	01	Oct. 01, 1998.
	Appendix 2		
	1–54	Original	Feb. 20, 1998.
A300–28–0073, Revision 01, October 01, 1998	1–67	01	Oct. 01, 1998.
A310–28–2130, Revision 01, October 01, 1998	1–91	01	Oct. 01, 1998.
A300–28–6058, Revision 01, October 01, 1998	1–67	01	Oct. 01, 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 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 98–174–248(B), dated April 22, 1998.

(g) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14437 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–208–AD; Amendment 39–11777; AD 2000–11–28]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 767–200 and –300 Series Airplanes Powered by Pratt & Whitney Model PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and 767–200 and –300 series airplanes, that requires repetitive inspections to detect damage and wear of the auxiliary track assembly of the thrust reverser, and corrective actions, if necessary. This amendment also requires eventual repair of the auxiliary track assembly, or replacement of the slider and liner or the entire assembly, with new, improved parts, which, when accomplished, would terminate the repetitive inspections. This amendment is prompted by reports of damage and wear to the auxiliary track assembly. The actions specified by this AD are intended to prevent a slider disengaging from the auxiliary track assembly, which could lead to separation of a portion of the thrust reverser from the airplane during flight, possible impact of separated portions on airplane structure, and consequent possible rapid decompression of the airplane, reduced controllability of the airplane, or reduced structural integrity of the fuselage.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

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 Boeing Model 747–400 and 767–200 and –300 series airplanes was published in the **Federal Register** on October 19, 1999 (64 FR 56276). That action proposed to require repetitive inspections to detect damage and wear of the auxiliary track assembly of the thrust reverser, and corrective actions, if necessary. That action also proposed to require eventual replacement of the liner and slider, or the entire assembly, with new, improved parts, which, when accomplished, would terminate the 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.

One commenter supports the proposed rule.

Request To Revise Certain Requirements in the Proposed AD

Several commenters indicate that they disagree with the proposed replacement of the auxiliary track beam assembly, including installation of a new slider and liner, regardless of the amount of wear and/or damage to the track beam. The commenters request that repair of the track beam be allowed when the damage is within the allowable limits specified in the referenced service information. One commenter states that replacement of the track beam fitting is required only when the wear or damage is beyond repairable limits, as specified in Boeing Service Bulletin 747–78A2164, Revision 2, and Boeing Service Bulletin 767–78A0079, Revision 2. The commenter notes that replacement of the track beam fitting in and of itself does nothing to address the root cause of the excessive wear; however, the new design slider fitting and track liner do address and correct the root cause. A second commenter states that the service bulletins specify replacement of the track beam assembly if the track beam has any discrepancy AND the measurement of the gap is greater than 0.45 inch. If the track beam has any discrepancy and the gap measurement is less than 0.45 inch, only the slider and liner should be replaced. Another commenter states that replacement of the track beam assembly is necessary only when damage cannot be repaired by means of replacement of the liner, slider, and/or retainer bar.

The FAA concurs with the commenters' requests. The FAA has coordinated this issue with the manufacturer, and has determined that if the damage to the track beam assembly is not beyond the repairable limits specified in the referenced service bulletins, a repair that involves replacement of the slider and liner and installation of a retainer bar, in lieu of replacement of the track beam assembly, is acceptable. Therefore, paragraphs (a) and (c) of this AD have been revised to specify measuring the auxiliary track beam dimensions in accordance with the Accomplishment Instructions of the referenced service bulletins, and to allow repair if the measurement is within the allowable limits.

Request To Revise Cost Impact Information

One commenter states that the total number of U.S.-registered Model 747–400 series airplanes affected by the proposed AD should be higher than the 12 airplanes shown in the cost impact section. The commenter indicates that it has 10 affected airplanes in its fleet and assumes that other operators also have Model 747–400 series airplanes that are affected by the proposal.

The FAA concurs. The referenced service bulletin specifies a total of 36 Model 747–400 series airplanes of U.S.-registry that are powered by Pratt & Whitney PW4000 series engines. In light of this information, the FAA has revised the cost impact information, below, to specify that 36 Model 747–400 series airplanes of U.S. registry will be affected by this AD.

Request for Credit for Previously Accomplished Work

One commenter requests credit for prior accomplishment of work done in

accordance with Boeing Service Bulletin 747–78A2164, dated June 19, 1997, including Revision 1, dated February 5, 1998; and 767–78A0079, dated June 19, 1997, including Revision 1, dated February 5, 1998; which were previously issued revisions of the service bulletins referenced in the proposed rule as the appropriate sources of service information for accomplishment of the actions in the proposal. The commenter states that it incorporated the inspection and terminating actions described in the above service bulletins on two-thirds of its fleet beginning in June 1997. Additionally, the commenter states that the proposed rule requires different terminating action than the original and Revision 1 of the service bulletins specify.

The FAA partially concurs with the commenter's request. The FAA has determined that there are significant differences between Revision 2 of the service bulletins and the original issue. The accomplishment instructions in Revision 2 provide more detailed information about how to perform the inspections, and are more specific regarding the extent of damage permitted before accomplishing repair work. Therefore, the FAA cannot give credit for work accomplished in accordance with the original issue of the service bulletin. However, for any procedure which an operator has accomplished previously, the operator may request approval of an alternative method of compliance in accordance with the provisions of paragraph (d) of this AD.

Revision 1 of the service bulletin is essentially identical to Revision 2, which was cited in the proposed AD as the appropriate source of service information for accomplishment of the required actions. Revision 2 simply changes the recommended repetitive inspection interval for detection of no wear or damage. Therefore, this final rule has been revised to add a new NOTE 4 to include Revision 1 of the referenced service bulletins as an additional source of service information for accomplishment of the actions.

Request To Extend Compliance Time and Revise Proposed Inspection

One commenter states that the results of a survey of operators of Model 747 and 767 series airplanes powered by Pratt & Whitney PW4000 series engines, which was conducted by the manufacturer in January 1998, revealed that the most significant wear occurs on the lower auxiliary track assembly. The commenter recommends that the inspection only pertain to that assembly. The commenter also requests that the FAA extend the grace period for inspection of the upper and lower auxiliary track assemblies from 90 days to 18 months for the reason stated previously.

The FAA does not concur with the commenter's requests. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but accomplishment of the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. However, under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

In addition, the inspection required by paragraph (a) of the final rule is required to be accomplished in accordance with the inspection procedures specified in Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998; or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998; as applicable. Inspection of only the lower auxiliary track assembly is inadequate, in light of the fact that service experience accumulated over time has shown that excessive wear and damage are present in both the upper and lower auxiliary track assemblies. Therefore, no change to the final rule is necessary in this regard.

Other Related Service Information

One commenter recommends that the FAA include the actions specified in Boeing Service Bulletins 767–78–0005, 767–78–0037, and 767–78–0039 in the proposed rule as additional requirements. These service bulletins describe the replacement of the aluminum auxiliary slider fittings of the original design with new design steel fittings, on Model 767 series airplanes powered by General Electric CF6–80A and Pratt & Whitney JT9D–7R4D series engines. The commenter states that cracking of the aluminum fittings due to fatigue loading could result in breakage of the slider and subsequent separation of a portion of the thrust reverser from the airplane, which could lead to an unsafe condition similar to that addressed in the proposed AD.

The FAA does not concur with the commenter's recommendation. The FAA has determined that since the suggested changes would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA will discuss this issue with the manufacturer at a later date; therefore, no change to the final rule is necessary.

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

There are approximately 254 airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 Model 747–400 series airplanes and 46 Model 767–200 and –300 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per engine to accomplish the required repetitive inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators of Model 747–400 series airplanes (4 engines per airplane) is estimated to be $34,560, or $960 per airplane, per inspection cycle. The cost impact of the AD on U.S. operators of Model 767 series airplanes (2 engines per airplane) is estimated to be $22,080, or $480 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of the auxiliary track assembly, it would take approximately 220 work hours per auxiliary track assembly to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,090. Based on these figures, the cost impact of this replacement is estimated to be $43,290 per assembly. There are four auxiliary track assemblies per engine.

Should an operator be required to accomplish the replacement of the liner and slider, it would take approximately 8 work hours per auxiliary track assembly to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this replacement is estimated to be $480 per assembly. There are four auxiliary track assemblies per engine.

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:

2000–11–28 Boeing: Amendment 39–11777. Docket 99–NM–208–AD.

Applicability: Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines, line numbers 696 through 1100 inclusive; and Model 767–200 and –300 series airplanes powered by Pratt & Whitney PW4000 series engines, line numbers 1 through 646 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a slider disengaging from the auxiliary track assembly, which could lead to separation of a portion of the thrust reverser from the airplane during flight, possible impact of separated portions on airplane structure, and consequent possible rapid decompression of the airplane, reduced controllability of the airplane, or reduced structural integrity of the fuselage, accomplish the following:

Initial Inspection

(a) Prior to the accumulation of 3,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the upper and lower auxiliary track assemblies on each thrust reverser half of each engine to detect missing segments of the track lip; to detect signs that the slider has disengaged from the track; to detect cracks, gouges, and wear of the liner; and measure the auxiliary track beam dimensions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998 (for Model 747–400 series airplanes); or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998 (for Model 767 series airplanes); as applicable.

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.''

Repetitive Inspections/Corrective Actions

(1) If no discrepancy is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 3,000 flight cycles or 7,000 flight hours, whichever occurs earlier, until paragraph (b) or (c), as applicable, has been accomplished.

(2) If the auxiliary track lip has a missing segment of 3 inches or longer, or longitudinal cracks at the base of the lip, or other indications that the slider has disengaged from the track in the forward 4 inches, prior to further flight, repair in accordance with Part A of the Accomplishment Instructions of the applicable service bulletin. Repeat the detailed visual inspection thereafter at the applicable intervals specified in Part A of the Accomplishment Instructions of the applicable service bulletin, until paragraph (c) of this AD has been accomplished.

(3) If the auxiliary track lip has a missing segment of 3 inches or longer, or longitudinal cracks at the base of the lip, or other indications that the slider has disengaged from the track AFT of the forward four inches, accomplish paragraphs (a)(3)(i) or (a)(3)(ii) of this AD.

(i) Prior to further flight, repair in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin. Repeat the detailed visual inspection thereafter at the applicable intervals specified in Part B of the Accomplishment Instructions of the applicable service bulletin, until paragraph (c) of this AD has been accomplished.

(ii) Accomplish both paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) of this AD:

(A) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–2 of Boeing Document D6U10151, ''Boeing 747–400 Dispatch Deviations Guide,'' Revision 11, dated March 31, 1998 (for Model 747–400 series airplanes); or Section 78–2 of Boeing Document D630T002, ''Boeing 767 Dispatch Deviations Guide,'' Revision 19, dated May 14, 1999 (for Model 767 series airplanes); as applicable. No more than one thrust reverser on any airplane may be deactivated under the provisions of the paragraph.

Note 3: The airplane may be operated for up to 30 days in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that no more than one thrust reverser on the airplane is inoperative.

(B) Within 30 days after deactivation of any thrust reverser in accordance with paragraph (a)(3)(ii)(A) of this AD, the thrust reverser must be repaired in accordance with the Accomplishment Instructions of the applicable service bulletin; once this is accomplished, the thrust reverser may then be reactivated. Repeat the detailed visual inspection thereafter at the applicable intervals specified in the Accomplishment Instructions of the applicable service bulletin, until paragraph (c) of this AD has been accomplished.

Terminating Action

(b) For any auxiliary track assembly on which no discrepancy is detected during any detailed visual inspection required by paragraph (a) of this AD: Replace the liner and slider of the auxiliary track assembly with a new, improved liner and slider, in accordance with Part A of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998 (for Model 747–400 series airplanes); or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998 (for Model 767 series airplanes); as applicable; at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Such action constitutes terminating action for the requirements of this AD for that assembly.

(1) Within 6,000 flight cycles, 14,000 flight hours, or 5 years after the date of the first inspection, whichever occurs earliest; or

(2) Within 4 years after the effective date of this AD.

(c) For any auxiliary track assembly on which any discrepancy is detected during any detailed visual inspection required by paragraph (a) of this AD: Repair the auxiliary track assembly (replace the slider and liner and install a retainer bar), or replace with a new, improved assembly (including a new liner and slider), as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998 (for Model 747–400 series airplanes); or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998 (for Model 767 series airplanes); as applicable; at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD. Such action constitutes terminating action for the requirements of this AD for that assembly.

(1) Within 4,500 flight cycles, 10,000 flight hours, or 3 years after the date of the first repair, whichever occurs earliest; or

(2) Within 2 years after the effective date of this AD.

Note 4: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–78A2164, Revision 1, or Boeing Service Bulletin 767–78A0079, Revision 1, both dated February 5, 1998; are considered acceptable for compliance with the applicable actions specified in this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 5: 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

(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.

Incorporation by Reference

(f) Except as provided by paragraph (a)(3)(ii)(A) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998; or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998; 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(g) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14436 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–230–AD; Amendment 39–11773; AD 2000–11–24]

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 repetitive inspections to detect discrepancies of the downlock support assembly and attachment of the nose landing gear (NLG), and of the bulkhead and adjacent structure in the NLG bay; and corrective action, 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 damage of the NLG downlock support, which could result in collapse of the NLG and consequent injury to passengers or flightcrew.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft, 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 April 7, 2000 (65 FR 18260). That action proposed to require repetitive inspections to detect discrepancies of the downlock support assembly and attachment of the nose landing gear (NLG), and of the bulkhead and adjacent structure in the NLG bay; and corrective action, 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 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 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 $2,400, or $240 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:

2000–11–24 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11773. Docket 99-NM–230-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 detect and correct damage of the nose landing gear (NLG) downlock support, which could result in collapse of the NLG, and consequent injury to passengers or flightcrew, accomplish the following:

Repetitive Inspections and Corrective Action

(a) Within 6 months or 750 flight cycles after the effective date of this AD, whichever occurs first, perform a general visual inspection to detect discrepancies (e.g., damage, or loose nuts or bolts) of the NLG downlock support assembly, bulkhead, attachment locations, and adjacent structure in the NLG bay; in accordance with British Aerospace Service Bulletin ATP–53–36, Revision 1, dated February 21, 2000. Thereafter, repeat the inspection at intervals not to exceed 2 years or 3,000 flight cycles, whichever occurs first.

(1) If any damage is found during any inspection in accordance with paragraph (a) of this AD, prior to further flight, repair in accordance with the service bulletin.

(2) If any loose nut or bolt is found during any inspection in accordance with paragraph (a) of this AD, prior to further flight, torque the affected nut or bolt to the limits specified in the service bulletin, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with British Aerospace Service Bulletin ATP–53–36, dated June 9, 1999, are considered acceptable for compliance with the applicable actions specified in this amendment.

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 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

(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 actions shall be done in accordance with British Aerospace Service Bulletin ATP–53–36, Revision 1, dated February 21, 2000. 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, 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 5: The subject of this AD is addressed in British airworthiness directive 006–06–99.

(e) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14435 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–22–AD; Amendment 39–11774; AD 2000–11–25]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–232 and –233 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–232 and –233 series airplanes, that requires replacement of the fuel metering units (FMU) of each engine with modified FMU's. 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 an inadvertent increase in thrust, which could result in reduced controllability of the airplane during final approach.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 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, 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 Airbus Model A320–232 and –233 series airplanes was published in the **Federal Register** on March 27, 2000 (65 FR 16157). That action proposed to require replacement of the fuel metering units (FMU) of each engine with new FMU's.

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 the Proposal

One commenter supports the proposed rule.

Extension of Compliance Threshold

One commenter, an operator, requests that the compliance threshold in the proposed AD be revised to allow the FMU replacements to be completed by December 31, 2001, as recommended in the related Airbus service bulletin. The commenter states that the FMU manufacturer has indicated that its capacity for modification of existing units and manufacture of new units will not be sufficient to meet the 12-month deadline that was specified in the proposed AD.

The FAA concurs with this request. Based on information received since issuance of the proposed AD, the available supply of FMU's will be inadequate to meet the replacement requirements of the AD in the time proposed. In light of this situation, the FAA has determined that extending the compliance time to ''18 months after the effective date of this AD'' will accommodate the time necessary for affected operators to obtain replacement parts without adversely affecting safety. The FAA considers that this extension will be approximately equivalent to the calendar date suggested by the commenter. The final rule has been revised accordingly.

Reference to FMU Replacement Parts

The same commenter suggests that the proposed AD be revised to refer to replacement of FMU's with ''upgraded'' or ''modified'' FMU's. The commenter states that, although the proposed AD requires replacement of the FMU's with ''new'' FMU's, the existing (old) configuration FMU's also can be modified, reidentified, and reinstalled. The commenter states that rewording the AD will avoid the possible misinterpretation that only new (zero total time) FMU's are acceptable as replacement parts.

The FAA acknowledges that clarification of the requirements is necessary. The FAA's intent in the proposal was to require replacement of the FMU's with FMU's having a different part number, as specified in Airbus Service Bulletin A320–73–1067, dated August 11, 1999. That service bulletin is referenced in the proposed AD as the appropriate source of service information. Although the term ''new'' could be construed as installing a new unit of the same part number, the FAA notes that replacement with the same part number is not specified in the service bulletin. To avoid confusion, the FAA has revised the final rule to specify that FMU's are to be replaced with ''modified'' FMU's.

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 described previously. 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 77 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane (7 work hours per engine) to accomplish the required replacements, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer or vendor at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $64,680, or $840 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:

2000–11–25 Airbus Industrie: Amendment 39–11774. Docket 2000–NM–22–AD.

Applicability: Model A320–232 and –233 series airplanes, certificated in any category, except those airplanes on which Airbus Modification 27146 or 28006 has been installed, or on which Airbus Service Bulletin A320–73–1067 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 (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 an inadvertent increase in thrust, which could result in reduced controllability of the airplane during final approach, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the fuel metering units (FMU) of each engine with modified FMU's, in accordance with Airbus Service Bulletin A320–73–1067, dated August 11, 1999.

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 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

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

Incorporation by Reference

(d) The replacement shall be done in accordance with Airbus Service Bulletin A320–73–1067, dated August 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 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 3: The subject of this AD is addressed in French airworthiness directive 2000–005–143(B), dated January 12, 2000.

(e) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14434 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–53–AD; Amendment 39–11775; AD 2000–11–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330 and A340 series airplanes, that requires repetitive ultrasonic inspections to detect corrosion of the retraction links of the main landing gear (MLG), and replacement of the retraction link with a new retraction link, 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 corrosion of the retraction link of the MLG, which could result in reduced structural integrity and possible collapse of the MLG.

DATES: Effective July 18, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 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, 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 Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on April 7, 2000 (65 FR 18258). That action proposed to require repetitive ultrasonic inspections to detect corrosion of the retraction links of the main landing gear (MLG), and replacement of the retraction link with a new retraction link, 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

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicablity of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane, per inspection cycle.

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:

2000–11–26 Airbus Industrie: Amendment 39–11775. Docket 2000–NM–53–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct corrosion of the retraction links of the main landing gear (MLG), which could result in reduced structural integrity and possible collapse of the MLG, accomplish the following:

Repetitive Ultrasonic Inspections

(a) Within 36 months time-in-service on any new retraction link, or within 2 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect corrosion of the retraction links left- and right-hand of the MLG, in accordance with Airbus Service Bulletin A330–32–3105, Revision 01, dated December 14, 1999 (for Model A330 series airplanes), or Airbus Service Bulletin A340–32–4148, Revision 01, dated December 14, 1999 (for Model A340 series airplanes), as applicable.

(1) If no corrosion is detected, or if corrosion is detected that is within the limits specified in the applicable service bulletin, repeat the inspection thereafter at intervals not to exceed 6 months.

(2) If any corrosion is detected that is outside the limits specified in the applicable service bulletin, replace the affected retraction link with a new retraction link at the time specified and in accordance with the procedures specified in the applicable service bulletin. Thereafter, repeat the inspection specified in paragraph (a) on any new retraction links, at the time specified in paragraph (a) of this AD.

Note 2: The Airbus service bulletins reference Messier-Dowty Service Bulletins A33/34–32–151, Revision 3, including Appendix A, and A33/34–32–152, Revision 3, including Appendix A, each dated January 11, 2000, as additional sources of service information for accomplishing the repetitive inspections.

Note 3: Although the inspection schedule of this AD applies to both left-and right-hand retraction links of the MLG, replacement of a retraction link, prior to scheduled replacement, would result in subsequent staggered inspections for the remainder of the retraction links.

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 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

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A330–32–3105, Revision 01, dated December 14, 1999; or Airbus Service Bulletin A340–32–4148, Revision 01, dated December 14, 1999; 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 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 directives 2000–013–107(B) R1, dated February 9, 2000, and 2000–015–132(B), dated January 12, 2000.

(e) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14433 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–139–AD; Amendment 39–11776; AD 2000–11–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This action requires a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, and repair, if necessary. This action is necessary to detect and correct disbonding of the vertical stabilizer structure, which could result in reduced structural integrity of the spar boxes of the vertical stabilizer.

DATES: Effective June 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–139–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. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2000–NM–139–AD'' in the subject line and need not be submitted in triplicate.

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 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.

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: The Direction Geuneurale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that localized disbonding has been detected on the skin attachments at the stringers and spars of the spar boxes of the vertical stabilizer. During the manufacturing process, pre-cured parts (attachments of the stringers, spars, and ribs) are installed on the skin panel before the final curing process. A peel ply is used to protect the contact surfaces of the attachment angles of the skin panels of the vertical stabilizer until the pre-cured parts are ready for installation. Investigation revealed that, after the peel ply was removed from the attachment angles, a residue of polymer finish contaminated the contact surfaces of some pre-cured parts. This contamination reduced the adhesive strength of the bond and, in some cases, caused debonding (disbonding) of the skin attachments. This condition, if not detected and corrected, could result in reduced structural integrity of the spar boxes of the vertical stabilizer.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A320–55A1027, dated May 12, 2000, which describes procedures for a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, left-and right-hand sides, and repair, if necessary. If any disbonding (damage) is detected and the area of damage is greater than 300 square millimeters (mm2), or if multiple damage is detected on one specific component (stringer-spar attachment), the repair involves installing additional fasteners in the affected areas. The amount of damage determines the number of additional fasteners to be installed in the affected area.

Additionally, Airbus Service Bulletin A320–55A1027 references Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999, which, for certain airplanes, describes procedures for prior or concurrent modification of the vertical stabilizer to ensure proper reinforcement of the structure-skin attachments.

The DGAC classified Airbus Service Bulletin A320–55–A1027 as mandatory and issued French airworthiness directive T2000–208–148(B) R1, dated May 17, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct disbonding of the vertical stabilizer structure, which could result in reduced structural integrity of the spar boxes of the vertical stabilizer. This AD requires a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, and repair, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Interim Action

This is considered interim action. The manufacturer has advised that it is currently developing a repetitive inspection program to positively address the unsafe condition addressed by this AD. Once this repetitive inspection program is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–139–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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:

2000–11–27 Airbus Industrie: Amendment 39–11776. Docket 2000–NM–139–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–55A1027, dated May 12, 2000.

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 disbonding of the vertical stabilizer structure, which could result in reduced structural integrity of the spar boxes of the vertical stabilizer, accomplish the following:

Ultrasonic Inspection

(a) Within 60 days after the effective date of this AD, perform a one-time ultrasonic inspection to detect disbonding (damage) of the skin attachments at the stringers and spars of the vertical stabilizer, left-and right-hand sides, in accordance with Airbus Service Bulletin A320–55A1027, dated May 12, 2000.

(1) If no damage is detected or if a single area of damage is less than or equal to an area of 300 square millimeters (mm2), no further action is required by this AD.

(2) If any damage is detected and the area of damage is greater than 300 mm2, or if multiple damage is detected on one specific component (stringer/spar attachment), prior to further flight, accomplish applicable repairs in accordance with the service bulletin.

Modification (for Certain Airplanes)

(b) For airplanes with manufacturer's serial numbers listed in paragraph B of the Planning Information of Airbus Service Bulletin A320–55A1027, dated May 12, 2000: Prior to or concurrent with the ultrasonic inspection required by paragraph (a) of this AD, modify the vertical stabilizer to ensure proper reinforcement of the structure/skin attachments, in accordance with Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999.

Note 2: Accomplishment of the modification required by paragraph (b) of this AD, prior to the effective date of this AD, in accordance with Airbus Service Bulletin A320–55–1026 dated March 29, 1999, is considered acceptable for compliance with the applicable requirement of 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, 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

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

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin

A320–55A1027, dated May 12, 2000, and Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 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 4: The subject of this AD is addressed in French airworthiness directive T2000–208–148(B) R1, dated May 17, 2000.

(f) This amendment becomes effective on June 28, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14432 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–38–AD; Amendment 39–11779; AD 2000–12–01]

RIN 2120–AA64

Airworthiness Directives; Airworthiness Directives; CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C, and –7B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain CFM International (CFMI) CFM56 series turbofan engines,

that requires revisions to the Airworthiness Limitations Section of applicable Engine Shop Manuals (ESMs). These revisions incorporate required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment requires the addition of CFM56 engine models to the applicability section of the AD, and the introduction of additional inspections. This amendment is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date December 11, 2000.

ADDRESSES: The Rules Docket may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–08–16, Amendment 39–11122 (64 FR 17962, April 13, 1999), applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines, was published in the **Federal Register** on October 7, 1999 (64 FR 54589). That action proposed to require the addition of CFM56 engine models to the applicability section of the AD and the introduction of additional inspections.

Comments Received

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

Effective Date

Several commenters request that the effective date of the AD be set to allow for sufficient time for publication of the procedures, procurement of the equipment, and training.

The FAA agrees. The effective date for the final rule will be set at 180 days after publication in the **Federal Register**.

Extend Notice of Proposed Rulemaking (NPRM) Comment Period

Two commenters request that the NPRM comment period be extended until after the proposed inspections are published, to allow time for the operators to review the specific inspections that will be required.

The FAA does not agree. The nature and scope of the added inspections are not significantly different from existing inspections. Additionally, the effective date of this AD has been set to 180 days after publication of the AD, to allow time for the specific procedures to be published. Operators may submit comments to the docket file on the specific procedures, once they are published; the FAA will then consider an extension of the effective date or additional rulemaking, as necessary. The FAA does not believe that this final rule should be delayed pending the publication of the inspection procedures.

NPRM Preamble

One commenter notes that the preamble for the NPRM supersedure does not exactly track the preamble for the NPRM for the current AD. Specifically, the commenter notes that the supersedure preamble does not contain the explanation as to when the enhanced disk inspections are required; the commenter is concerned that the inspection program is being changed from the current AD. The commenter requests that the FAA change the preamble for the NPRM supersedure to reflect the content of the NPRM published for the current AD.

The FAA does not agree. The inspection program established by the current AD remains unchanged. This proposal does not change how air carriers must manage the inspection program. As stated in the NPRM for the current AD, future ADs may be issued to introduce additional intervention strategies in order to further reduce uncontained engine failures. This could include ADs that add new parts to the list of parts inspected. The inspection program established by the current AD, however, will remain in place unless specifically altered in a future proposal.

Unsafe Condition

One commenter objects to the language in the preamble of the NPRM supersedure for the second phase of enhanced inspections, which includes a finding of an ''unsafe condition.'' The commenter requests that the term ''unsafe condition'' be deleted and replaced with the justification language from the original NPRM.

The FAA does not agree. This commenter does not disagree with the proposed rule itself, but with the term ''unsafe condition'' contained in the preamble to the NPRM. It is not the intent of the FAA to completely change the enhanced disk inspection program established by the current AD, which evolved as a cooperative effort between the FAA and industry. This intervention strategy was designed to reduce the number of uncontained engine failures by mandating enhanced nondestructive inspections of critical components that could most likely result in a hazard to the airplane in the event of a disk failure. Since the engine maintenance manuals did not mandate these enhanced inspections, the current AD was necessary to establish the inspection program as an airworthiness limitation. Regardless of the fact that it was not stated explicitly in the original NPRM, the FAA determined that an ''unsafe condition'' existed because the engine maintenance manuals did not contain enhanced inspections as an airworthiness limitation. The intent was not to imply any defect in the actual engine hardware, but simply to state that the maintenance manuals, which form part of the approved engine design, must be revised to mandate the enhanced inspections. The supersedure repeats that finding with respect to the additional parts being added to the enhanced inspection program. Because a finding of an ''unsafe condition'' is a requirement for the issuance of an AD, future NPRMs to add parts to the program will also include that finding.

Cycles in Service

One commenter requests that the FAA change the cycles in service in paragraph (2)(ii) of the mandatory inspections language contained in paragraph (a) from 100 cycles to 300 cycles. The commenter believes that a 300 cycle interval is more representative of its A-check interval.

The FAA does not agree. The FAA is aware that although cracks can be missed during part inspections, the probability of detecting a crack increases each time a part is processed through an inspection line. Commonly used on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. The FAA established the 100 cycle threshold in recognition of the two opposing aspects of part removal and inspection, i.e., a need for a brief exemption period following the performance of mandatory inspections and the benefits of increased frequency of inspection. The

time between A-check intervals or crack growth time was not a factor in the determination of the threshold for exempting parts from focused inspection. The threshold is based strictly on keeping the frequency of mandatory inspection as high as practical, to increase the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. The FAA will not revise paragraph (2)(ii) of the mandatory inspections language in paragraph (a) of the final rule.

Estimated Annual Cost

One commenter suggests that the total estimated annual cost of $870 per engine for the proposed inspections is not accurate. The commenter suggests that a total annual cost of $2,271 per engine is more accurate, based on its estimation of piece-part exposure rate.

The FAA does not agree. The total estimated annual cost per engine noted in the economic analysis of the NPRM is representative of the piece-part exposure rate of all affected U.S. operators, not one specific operator. The FAA will not revise the economic analysis of the final rule.

Addition to Applicability Section

One commenter suggests adding the Airbus Industrie A318 and Boeing C–135 (military) series airplanes to the applicability section of the final rule.

The FAA partially agrees. Currently, no A318 aircraft are powered by CFM56 engines; this series will not be added to the final rule. The applicability section of the final rule will be revised to add the Boeing C–135 (military) series airplanes; the Boeing KE–3 (military) and RC–135 (military) series airplanes will also be added, to be complete.

Clarification of Paragraph (e)

One commenter requests that the FAA delete the phrase ''of this chapter'' from the first sentence of paragraph (e) of the compliance section, to improve the clarity of this paragraph.

The FAA agrees. The words ''of this chapter'' have been deleted from paragraph (e).

''Time Limits Section''

One commenter recommends replacing references to the ''Time Limits Section'' with references to the more general ''Airworthiness Limitations Section,'' since Chapter 5 now contains two subsets, 05–11–00 for life limits and 05–21–00 for mandatory inspections. The commenter also recommends replacing the references to ''chapter 05–11–00'' with ''chapter 05–00–00.''

Another commenter recommends replacing references to the ''Time Limits Section'' with ''Life Limits Section,'' to eliminate confusion. The commenter also recommends replacing references to ''chapter 05–11–00'' with ''chapter 05–21–00,'' because Chapter 5 now contains a new section, 05–21–00, for the mandatory inspections.

The FAA partially agrees. The references to the ''Time Limits Section'' have been changed in the final rule to the more general ''Airworthiness Limitations Section.'' The references to ''chapter 05–11–00'' have been changed in the final rule to ''chapter 05–00–00.''

Revisions to the Table

Three commenters suggest revising the table in paragraph (1) of the mandatory inspections language contained in paragraph (a) of the proposed AD to correct minor typographical errors to eliminate confusion. The suggested revisions are as follows:

- Replace ''Bold'' with ''Bolt'' in the Inspection column for the CFM56–2/–2A/–2B/–3/–3B/–3C HPT Disk;
- Replace ''Bold'' with ''Rim Bolt'' in the Inspection column for the CFM56–2/–2A/–2B/–3/–3B/–3C HPT Disk; and
- Replace ''Disk'' with ''Seal'' in the Inspection column for the HPT Front Rotating Air Seal.

The FAA agrees. The FAA has corrected the typographical errors and has also made the following corrections:

- Replaced ''–B'' with ''–2B'' in the Engine models column for the HPT Disk; and
- Capitalized the word ''rotating'' in the Part name column for the CFM56–5/–5B/–5C/–7B.

Adoption of the Rule as Proposed

Three commenters support the adoption of the rule as proposed.

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 with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 6,953 engines of the affected design in the worldwide fleet. The FAA estimates that 2,453 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per engine for the fan disk inspection, 13 work hours for the HPT disk inspection, and 13 work hours for the HPT front rotating air seal inspection. The average labor rate is $60 per work hour. Using average shop visitation rates, 554 fan disks, 891 HPT disks, and 563 HPT front rotating air seals are expected to be affected per year. The total estimated annual cost of the AD on U.S. operators is approximately $2,131,320, or $870 per engine.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11122 (64 FR 17962, April 13, 1999) and by adding a new airworthiness directive,

Amendment 39–11779, to read as follows:

2000–12–01 CFM International: Amendment 39–11779. Docket No. 98–ANE–38–AD. Supersedes AD 99–08–16, Amendment 39–11122.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C, and –7B series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, Airbus Industrie A319, A320, A321, and A340 series, as well as Boeing C–135, E–3, E–6, KC–135, KE–3, and RC–135 (military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (chapter 05–00–00) of Engine Shop Manual (ESM) CFMI–TP.SM.4 for CFM56–2 series engines, ESM CFMI-TP.SM.6 for CFM56–2A/–2B series engines, ESM CFMI–TP.SM.5 for CFM56–3/–3B/–3C series engines, ESM CFMI–TP.SM.7 for CFM56–5 series engines, ESM CFMI–TP.SM.9 for CFM56–5B series engines, ESM CFMI–TP.SM.8 for CFM56–5C series engines, and ESM CFMI–TP.SM.10 for CFM56–7B series engines, and for air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the Inspection/Check section instructions provided in the applicable manual sections listed below:

Engine models	Part name	Engine manual section	Inspection
All	Fan Disk (All Part Number (P/N))	72–21–03	Disk Fluorescent Penetrant Inspection (FPI) and Disk Bore and Dovetail Eddy Current Inspection (ECI).
CFM56–2/–2A/–2B/–3/–3B/–3C	High Pressure Turbine (HPT) Disk (All P/N).	72–52–02	Disk FPI and Disk Bore and Rim Bolt Hole(s) ECI.
CFM56–5/–5B/–5C/–7B	HPT Disk (All P/N)	72–52–02	Disk FPI and Disk Bore ECI.
CFM56–2A/–2B/–3/–3B/–3C	HPT Front Rotating Air Seal (All P/N)	72–52–03	Seal FPI and Seal Bore and Bolt Hole(s) ECI.
CFM56–5/–5B/–5C/–7B	HPT Front Rotating Air Seal (All P/N)	72–52–03	Seal FPI and Seal Bore ECI and Seal Bolt Hole(s) Focused FPI.
CFM56–2	HPT Front Rotating Air Seal (All P/N)	72–52–03	Seal FPI and Seal Bore ECI and Seal Bolt Hole(s) ECI *or* focused FPI as applicable.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Airworthiness Limitations Section of the manufacturer's ESM.

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 Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

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

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) must maintain records of the mandatory inspections that result from revising the Airworthiness Limitations Section of the applicable ESM and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the ESM changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the applicable ESM.

Effective Date

(f) This amendment becomes effective on December 11, 2000.

Issued in Burlington, Massachusetts, on June 5, 2000.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–14788 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–24]

Establishment of Class E Airspace; Yukon-Kuskokwim Delta, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace over the Yukon-Kuskokwim (Y–K) Delta area in southwest Alaska in support of the Capstone Research and Development (R&D) project. Specifically, this action establishes controlled airspace extending from 1,200 feet above ground level (AGL) upwards to the base of the existing Class E airspace of 14,500 feet above mean sea level (MSL) within an area bounded by lat. 58°25′36″ N long. 158°00′W, to lat. 57°50′ N long. 158°00′ W, to lat. 57°50′ N long. 156°00′ W, to lat. 64°00′ N long. 156°00′ W, to lat. 64°00′ N long. 161°41′ 24″ W, then via the 12 nautical mile limit to the point of beginning. This rule will (1) provide adequate controlled airspace for commercial air carriers conducting Instrument Flight Rules (IFR) operations over southwest Alaska and (2) validate new operational procedures and equipment in the IFR environment.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

History

On February 24, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace over the Yukon-Kuskokwim Delta area in southwest Alaska was published in the **Federal Register** (65 FR 9227). The purpose of this rule is to create adequate controlled airspace and infrastructure for IFR operations in the Yukon-Kushkokwim Delta area where uncontrolled airspace currently exists. This controlled airspace is needed to validate new operational procedures and equipment in the IFR environment in support of the Capstone R&D project. Additionally, this rule will enhance flight safety, reduce the potential for midair collisions, improve operational efficiencies, and better manage air traffic operations.

The establishment of Class E airspace in this rule will impact on pilots' flight visibility and cloud avoidance requirements while flying under Visual Flight Rules (VFR), during the day above 1,200 feet AGL and below 10,000 feet MSL. The pilot's flight visibility requirement increases to three (3) statute miles. VFR weather minimums are shown in the following table extracted from 14 CFR 91.155 Basic VFR weather minimums:

BASIC VFR WEATHER MINIMUMS

	Flight visibility (statute mile(s))	Distance from clouds
Class G (uncontrolled):		
1,200 feet or less AGL, Day	1	Clear of clouds.
1,200 feet or less AGL, Night	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, Day	1	500 feet below. 1,000 feet above. 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, Night	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet AGL and at or above 10,000 feet MSL	5	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.
Class E (controlled):		
Less than 10,000 MSL	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
At or above 10,000 MSL	5	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.

Environmental Review

On February 25, 1999, the FAA initiated an environmental review, 99–AAL–024–NR, seeking public comment on the proposal to establish Class E airspace to encompass the Capstone Demonstration Area. In the environmental review solicitation, the FAA stated the desire to design and establish Class E airspace that will facilitate the development of the Capstone Demonstration and the transition to the future National Airspace System (NAS) Architecture with minimal impact on the environment. Significant environmental issues were not identified during the scoping process. Thus, this activity falls within a category of actions normally categorically excluded from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

On April 7, 1999, the FAA conducted a Preliminary Environmental Review. This review was conducted in accordance with policies and procedures in Department of Transportation Order 5610.1C, Procedures for Considering Environmental Impacts, Order 1050.1, and is in compliance with the National Environmental Policy Act of 1969 and in accordance with the regulations promulgated by the Council on Environmental Quality, 40 CFR 1500 *et seq.* Thus, on April 13, 1999, the FAA signed the Categorical Exclusion Declaration. This review enabled the

FAA to exclude this proposed action from further environmental documentation according to Order 1050.1, Policies and Procedures for Considering Environmental Impacts.

Comments Received on the Proposal

Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. The State of Alaska, Department of Fish and Game, Habitat and Restoration Division along with Larry's Flying Service wrote letters in support of the proposal. Larry's Flying Service requested clarification on some issues which the FAA deemed beneficial to address in the final rule.

(1) What is the intended meaning and understanding of ''validate new operational procedures and equipment in the IFR environment?'' Initially the Anchorage Air Route Traffic Control Center (ARTCC) controllers will provide ''radar like'' services to Capstone equipped aircraft. The controllers will use five (5) mile radar separation criteria with Automatic Dependent Surveillance—Broadcast (ADS–B) position reports. Initial evaluation of ADS data integrity indicates that smaller distance criteria may be attainable, however it is desirable to gain more experience with this technology before developing new procedures in this application. The ADS reports will be used to augment radar reports where radar coverage exists, and to supplement radar beyond and below existing radar coverage.

Validating new operational procedures and equipment includes the active participation by air carriers using the new equipment in their aircraft. Each air carrier, participating in the Capstone project, will work with the FAA to develop and incorporate new procedures into their general operations manuals and training programs. Each procedure developed will help validate whether the new equipment performs in a manner consistent with the manufacturers operating and performance specifications and safety. Adherence to newly developed procedures and providing feedback are vital elements of the validation process. Examples include evaluation of ADS–B generated traffic information as a collision avoidance tool in the instrument flight environment. Another example is the validation of ADS–B for ''radar like'' traffic management. Pilots and controllers alike will gain knowledge of ADS–B and learn how each group plans to use the information generated in order to integrate this technology as an effective element of the NAS.

(2) What is the view of the FAA at this time with respect to ''new GPS non-precision instrument approaches'' as pertaining to VFR Capstone equipped aircraft? Most Capstone equipped aircraft are not capable of operating IFR under part 121 or part 135 due to manufacturing or regulatory limitations, or equipment installed not meeting IFR requirements. The GPS installed with the Capstone avionics package is manufactured under TSO–129, and therefore fully capable of being operated in the IFR environment. It was the intention of the Capstone project to have the greatest positive impact on safety as possible by providing equipment to owner's that could be easily incorporated into VFR or IFR aircraft alike. Those carriers who wished to self equip their aircraft to meet IFR requirements could use Capstone GPS as a part of the required IFR equipment. The new GPS approaches and co-located AWOS sites, parts of the Capstone project, support safety and expand the IFR infrastructure in Alaska.

(3) How can an operator elect to support new operational procedures and new equipment for IFR operation if the procedures and equipment are not made known to the operator? IFR operations using the Capstone avionics will be supported by achieving Level C certification (needed for IFR operations). The ARTCC Air Traffic Control (ATC) automation system is being upgraded to provide aircraft position information to controllers to enable them to provide navigation assistance and separation from other radar and ADS identified aircraft after level C certification is achieved. The FAA will coordinate all new operational procedures before being implemented. All new equipment was coordinated with industry representatives in Alaska before final selection was made. Information on new equipment and procedures will be posted on the Capstone website (http://www.faa.gov/capstone) to aid in distribution.

(4) What is the rationale for the FAA's determination that this rule is a not a significant regulatory action and not a significant rule? The Department of Transportation (DOT) Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations (May 22, 1980), requires a regulatory analysis for each proposed regulation that will (1) result in an effect on the economy of $100 million or more; (2) result in a major effect on the general economy in terms of costs, consumer prices, or production; (3) result in a major increase in costs or prices for individual industries, levels of government, or geographic regions; (4) have a substantial impact on the U.S. balance of trade; or (5) be the result of the secretary or head of the initiating office determining a need for such analysis. In addition to the requirement in DOT Order 2100.5, Executive Order 12866 requires a regulatory analysis for significant proposed regulations that have an annual effect on the economy of $100 million or more or adversely effect, 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. Any regulation or other action that does not meet the above criteria and any regulation that is routine, frequent, or procedural may be issued by the FAA Administrator without review or approval by the DOT Secretary. The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires the FAA to consider the special needs and concerns of small entities. The FAA is required to prepare and publish an initial regulatory flexibility analysis describing the effect of a proposed rule on small entities for those proposed regulations that would have a significant economic impact on a substantial number of small entities. Where appropriate, the FAA must consider alternatives the would achieve its goals while minimizing the burdon on small entities. If the FAA determines that the proposed regulation would not have a significant economic impact, a factual basis for the determination must be provided.

(5) What operational changes does an operator in this environment need to apply for as pertaining to the Operators Operations Specifications as approved and issued the Operator by the FAA? Operators intending to use ADS–B operationally will need to seek guidance from the FAA Certificate holding district office that's assigned. Active procedural use of cockpit displays of traffic information (requiring pilots to use targets generated on cockpit displays) for visual acquisition, in trail maneuvers; station keeping; enhanced see and avoid; reduced separation standards; long range conflict management; or conflict detection and avoidance may require operations specification issuance.

(6) Does the FAA propose additional training and if so what type of training and testing? Controllers have received training in the new ATC ADS target display capability. FAA technicians will receive training in ground equipment theory and function to enable them to ensure proper equipment operation and performance. Training programs have been developed and given to carriers participating in the Capstone project.

Carriers should adapt the training material provided to meet their individual needs and requirements, and coordinate with their assigned FAA inspector.

(7) Will this ''new operational procedures under IFR'' apply to all IFR operators and pilots under FAA supervision? When will these new operational procedures be implemented? New operational procedures will apply to those aircraft equipped to utilized these procedures. Government acceptance testing of the new ATC functional enhancements has been completed. Anchorage ARTCC will be able to begin Initial Operations Capability evaluation on June 15, 2000. At this point controllers will begin to provide VFR advisories and traffic alerts to participating aircraft on a limited basis to validate their ability to conduct these operations. In August 2000, the ARTCC will go to Operational Readiness Demonstration, during which time the controllers will have the new ADS functional capabilities available on a full time basis. This is a higher level of validation leading to commissioning. It is expected that full IFR services, the final commissioning step, will be accomplished when the avionics achieves level C certification in November 2000. Eleven new stand alone GPS approaches are presently found in government and industry publications. Eight more GPS approaches are scheduled to be published by the end of August 2000. Each airport upgrading from VFR to IFR status is being provided with an Automated Weather Observing System (AWOS) in support of the Part 121 and Part 135 operating rules regarding weather reporting.

Comments were received urging the proposal be withdrawn for the following rationale: (1) Increased visibility and distance from clouds requirement above 1,200 feet AGL will hinder aircraft movement. Pilots would drop below 1,200 feet AGL, congesting this airspace and risk controlled flight into terrain or a mid-air collision, rather than request an IFR clearance and mess with positive control. (2) Radio communications via Remote Communications Air/Ground (RCAG) is limited in this area even incorporating Remote Communications Outlets (RCO). Pilots may not be able to contact an Air Traffic Control facility. (3) The workload on controllers at Automated Flight Service Station (AFSS) facilities will increase via relaying IFR and Special VFR clearances and other services. AFSS are not staffed to handle the increased radio communications. (4) Since only commercial aircraft will be equipped with the Capstone avionics and general aviation (GA) will be unable or unwilling to obtain clearances, there will be a combination of IFR and VFR aircraft operating within the same airspace during IFR conditions. Capstone participants cannot be assured separation from VFR and IFR traffic. (5) Poor pilot judgment in weather conditions below minimums does not warrant establishing a procedure that is extremely restrictive and alienates the small engine, GA pilot over such a large area of Alaska. (6) Capstone is doomed to failure because the FAA does not have the budget to allow compliance by all, nor maintain the data link infrastructure necessary for consistent reliability and future upgrades.

FAA Response to Comments

The FAA disagrees with the comments for withdrawal of the proposal for the following reasons:

(1) The visibility requirement above 1200 feet AGL will increase from one (1) statue mile in Class G airspace to three (3) statue miles in Class E airspace, however, cloud clearance requirements above 1200 feet AGL remain unaffected. These visibility increases provide a safety buffer needed when IFR and VFR flights operate in the same airspace. Capstone is a joint FAA/industry project initiated to reduce the current Alaskan air taxi accident rate which is six (6) times the national average. The airports receiving new instrument procedures were selected by a group of industry representatives comprising a broad spectrum of both GA and commercial interests. The required airspace actions, with the resulting increase in visibility requirements, are a result of joint planning and coordinating with these industry groups.

(2) RCAG/RCO coverage—ADS–B ''radar-like'' services are being implemented in a manner to utilize known air to ground radio coverage capabilities. Where it becomes known, in the implementation of this service, that additional voice communications coverage is needed, projects will be initiated to accommodate that need.

(3) The installation of Capstone equipment into an aircraft does not change the Federal Aviation Regulations (FARs) under which the aircraft must be operated. Those aircraft properly equipped to conduct flight in instrument conditions with a rated crew may be expected to file for IFR services at any time the weather deteriorates below VFR minima. There will not be any waivers granted to Capstone equipped aircraft to operate VFR in IFR conditions as this would be a violation of the governing FARs. Capstone is a safety initiative. By introducing moving map terrain, NOTAM, and weather information to aircraft in flight, it is anticipated that accident rates may be reduced. Because aircraft will have increased access to information normally provided by flight service specialists through voice transmission, specialist workload may actually decrease in some areas.

(4) One of the Capstone program objectives in support of the RTCA Free Flight Steering Committee is to provide participating aircraft the capability of ''enhanced see and avoid'' commonly referred to as Traffic Information Services (TIS). Initially, Capstone equipped aircraft will be able to display other similarly equipped aircraft, and in the foreseeable future radar tracked aircraft information will be uplinked to Capstone equipped aircraft as well. This information will be available to Capstone aircraft at all times, IFR or VFR, as long as they are within the service volume of a Capstone Ground Broadcast Transceiver. This should assist the pilot in performing their primary responsibility of ''seeing and avoiding'' other aircraft.

(5) The Capstone project cannot overcome all NAS infrastructure deficiencies and that is not the project's intent. Capstone project is a safety initiative implemented to demonstrate the advantages inherent in emerging technology and afford those benefits to Alaskans on a geographically expanding basis.

(6) The Capstone program is fully funded under the FAA's ''Facilities and Equipment'' budget process. The program is presently funded for three years with planning under way for at least two additional years. Current program projections are to expand the program to serve the entire State of Alaska. Capstone infrastructure enhancements include weather reporting stations and new GPS based approach development as well as increasing service to the public by providing ''radar like services'' using ADS–B. Capstone is a fully funded project designed to allow a real world validation of a mixture of equipment to improve safety. Newly installed AWOS sites fill the weather needs at previously unserved airports and close gaps in the present weather reporting areas allowing for better weather forecasting and real time weather dissemination to working flight crews. Ground based equipment installed in the field will be certified and maintained to appropriate NAS standards.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 (part 71) establishes Class E airspace within the Yukon-Kushkokwim Delta area in southwest Alaska. The intended effect of this rule is to create adequate controlled airspace and infrastructure for IFR operations within the in the Yukon-Kushkokwim Delta area where uncontrolled airspace currently exists. This controlled airspace is needed to validate new operational procedures and equipment in the IFR environment in support of the Capstone R&D project. Additionally, this rule will enhance flight safety, reduce the potential for midair collisions, improve operational efficiencies, and better manage air traffic operations.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Yukon-Kuskokwim Delta, AK [New]

That airspace extending upward from 1,200 feet above the surface within the area bounded by lat. 58° 25′ 36″ N long. 158° 00′ W, to lat. 57° 50′ N long. 158° 00′ W, to lat. 57° 50′ N long. 156° 00′ W, to lat. 64° 00′ N long. 156° 00′ W, to lat. 64° 00′ N long. 161° 41′ 24″ W, then via the 12 nautical mile limit to the point of beginning.

* * * * *

Issued in Anchorage, AK, on June 6, 2000.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–14861 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–ASO–8]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–7104 (R–7104), Vieques Island, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Area R–7104 (R–7104), Vieques Island, PR., from ''Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance'' to ''As activated by NOTAM 24 hours in advance.'' The FAA is taking this action in response to a request from the United States Navy (USN) and the FAA Southern Regional Air Traffic Division.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a review of restricted area operations, the USN and the FAA Southern Regional Air Traffic Division requested to change the requirements for the activation of R–7104, Vieques Island, PR. This action will simplify the Times of Designation portion of FAA Order 7400.8.

The Rule

This amendment to 14 CFR part 73 changes the time of designation for R–7104, Vieques Island, PR, by removing the words ''Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance,'' and inserting the words ''As activated by NOTAM 24 hours in advance.''

Since this is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted therein; I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.71 of part 73 was republished in FAA Order 7400.8G, dated September 1, 1999.

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

Environmental Review

In accordance with FAA Order 1050.1D, ''Polices and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy

Act of 1969, this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.71 [Amended]

2. § 73.71 is amended as follows:

* * * * *

R–7104 Vieques Island, PR [Amended]

By removing the words ''Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance'' and inserting the words ''As activated by NOTAM 24 hours in advance.''

* * * * *

Issued in Washington, DC, June 5, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–14859 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990701179–0167–03]

RIN 0694–AB90

Expansion of License Exception CIV Eligibility for ''Microprocessors'' Controlled by ECCN 3A001 and Graphics Accelerators Controlled by ECCN 4A003

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements. Consistent with technological changes, this interim rule adjusts the License Exception CIV eligibility level for microprocessors controlled by Export Control Classification Number (ECCN) 3A001 from a composite theoretical performance (CTP) of equal to or less than 3500 million theoretical operations per second (MTOPS) to a CTP of equal to or less than 4500 MTOPS. This rule also adjusts the License Exception CIV eligibility level for graphics accelerators controlled by Export Control Classification Number (ECCN) 4A003 from 75 million vectors per second to 100 million vectors per second. License Exception CIV authorizes exports and reexports to civil end-users for civil end-uses in Country Group D:1. CIV may not be used for exports or reexports to military end-users or end-uses.

To avoid unwarranted burdens on industry and keep the export control levels for commodity microprocessors at controllable levels, the Administration is committed to reviewing the CIV level on an ongoing basis. Based on industry projections, substantially more powerful commodity microprocessors will be released later this year. In light of this information, the Administration will continue to monitor the microprocessor market, and as circumstances warrant, we anticipate raising the CIV eligibility levels from 4500 MTOPS to a level somewhere between 5500 and 7000 MTOPS to account for the more powerful microprocessors entering mass production.

The exponential advance of microprocessor technology directly affects High Performance Computer (HPC) technology. Accordingly, the Administration is also committed to reviewing HPC control levels regularly. This summer, we will once again assess the HPC market to determine at what level computers are no longer controllable due to wide commercial production and dissemination of the computers and their components. Additionally, we will determine if the individual licensing levels for computers exported to Tier 2 and Tier 3 countries require adjustment. Finally, we will continue to examine whether CTP remains a viable metric for determining HPC export controls.

DATES: This rule is effective June 13, 2000. Comments on this rule must be received on or July 13, 2000.

ADDRESSES: Written comments should be sent to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish

to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close on July 13, 2000. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Export Administration Freedom of Information Officer at the above address or by calling (202) 482–0500.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:

1. The authority citation for part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999 (3 CFR, 1999 Comp. 302 (2000)).

PART 774—AMENDED

Supplement No. 1 to Part 774—Amended

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended by revising the License Exceptions section to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

License Exceptions

LVS: N/A for MT
$1500: 3A001.c
$3000: 3A001.b.1, b.2, b.3, .d, .e and .f
$5000: 3A001.a, and .b.4 to b.7
GBS: Yes, except 3A001.a.1.a, b.1, b.3 to b.7, .c to .f
CIV: Yes, except 3A001.a.1, a.2, a.3.a (for processors with a CTP greater than 4500 Mtops), a.5, a.6, a.9, a.10, and a.12, .b, .c, .d, .e, and .f

* * * * *

3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A003 is amended by revising the License Exceptions section to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, and specially designed components therefor.

* * * * *

License Exceptions

LVS: $5000; N/A for MT and ''digital'' computers controlled by 4A003.b and having a CTP exceeding 10,000 MTOPS; or ''electronic assemblies'' controlled by 4A003.c and capable of enhancing performance by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds 10,000 MTOPS.
GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.
CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.
CIV: Yes, for 4A003.d (having a 3–D vector rate less than or equal to 100 M vectors/sec), .e, and .g.

* * * * *

Dated: June 8, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–14903 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 92F–0443]

Indirect Food Additives: Adhesives and Components of Coatings; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its food additives regulations to correct two typographical errors in the Chemical Abstracts Service (CAS) registry number. This document corrects those errors.

DATES: This rule is effective June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 11, 2000 (65 FR 6889), the agency amended the food additive regulations to provide for the safe use of: (1) 1,2-dibromo-2,4-dicyanobutane, and (2) a mixture of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one, optionally containing magnesium nitrate, as antimicrobial agents in emulsion-based silicone coating formulations. The CAS registry number for 2-methyl-4-isothiazol-3-one was incorrectly published. The agency is amending both 21 CFR 175.300 and 175.320 to correct those errors.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 175.300 [Amended]

2. Section 175.300 *Resinous and polymeric coatings* is amended in paragraph (b)(3)(xxxiii), under the entry ''5-Chloro-2-methyl * * *'', by removing ''(CAS Reg. No. 2628–20–4)'' and adding in its place ''(CAS Reg. No. 2682–20–4)''.

3. Section 175.320 is amended in the table in paragraph (b)(3) by revising the entry under item (iii) for ''5–Chloro-2-methyl-4-isothiazolin-3-one'' under the headings ''List of substances'' and ''Limitations'' to read as follows:

§ 175.320 Resinous and polymeric coatings for polyolefin films.

* * * * *

(b) * * *

(3) * * *

List of substances	Limitations
* * * * * * *	
(iii) Adjuvants (release agents, waxes, and dispersants):	
* * * * * * *	
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172–55–4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2682–20–4) mixture, at a ratio of 3 parts to 1 part, respectively, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935–90–2) and optionally containing magnesium nitrate (CAS Reg. No. 10377–60–3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only as an antimicrobial agent in emulsion-based silicone coatings at a level not to exceed 50 milligrams per kilogram (based on isothiazolone active ingredient) in the coating formulation.
* * * * * * *	

* * * * *

Dated: June 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–14905 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 99N–2099]

General Hospital and Personal Use Devices; Classification of the Subcutaneous, Implanted, Intravascular Infusion Port and Catheter and the Percutaneous, Implanted, Long-term Intravascular Catheter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the subcutaneous, implanted, intravascular (IV) infusion port and catheter, and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II (special controls). This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: This rule is effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT: M. Patricia Cricenti, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105-115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act

(21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the General Hospital and Personal Use Devices Panel (the Panel), an FDA advisory committee, regarding the classification of these devices.

II. Regulatory History of the Devices

In the **Federal Register** of October 1, 1999 (64 FR 53294), FDA issued a proposed rule to classify the subcutaneous, implanted, IV infusion port and catheter, and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II. Interested persons were given until December 30, 1999, to comment on the proposed regulation.

In 1980, when other general hospital and personal use devices were classified (45 FR 69678, October 21, 1980), FDA was not aware that these two vascular access devices (the subcutaneous, implanted, IV infusion port and catheter and the percutaneous, implanted, long-term IV catheter) intended for repeated vascular access were preamendments devices, and inadvertently omitted classifying them.

FDA received one comment from a manufacturer who concurred with the proposed rule to classify the devices into class II. FDA agrees with the comment.

III. Summary of Final Rule

Based on the Panel's recommendation (Ref. 1), FDA is classifying the subcutaneous, implanted, IV infusion port and catheter and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II. FDA has determined that existing premarket notification FDA guidance documents, ''Guidance on 510(k) Submissions for Implanted Infusion Ports'' (Ref. 2) and ''Guidance on Premarket Notification [510(k)] Submission for Short-Term and Long-Term Intravascular Catheters'' (Ref. 3) are adequate special controls capable of providing reasonable assurance of safety and effectiveness with regard to the identified risks to health of these devices. The Panel also recommended including the prescription statement (§ 801.109 (21 CFR 801.109)) as a special control. Because this prescription statement is already required by § 801.109, FDA believes it is unnecessary to list prescription labeling as a special control for these devices.

IV. Summary of the Reasons for the Recommendations

Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the Panel's recommendation and the summary of data upon which the Panel's recommendation is based (Ref. 1), and it is also adopting the assessment of the risks to public health stated in the proposed rule published on October 1, 1999. Furthermore, FDA is issuing this final rule which classifies the generic types of devices, the subcutaneous, implanted, IV infusion port and catheter, and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As unclassified devices, these devices are already subject to premarket notification and the general labeling provisions of the act. FDA, therefore, believes that classification in class II with premarket notification guidances as special controls will impose no significant economic impact on any small entities. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These references may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. General Hospital and Personal Use Devices Panel, thirtieth meeting, transcript, March 11, 1996.

2. ''Guidance on 510(k) Submissions for Implanted Infusion Ports,'' FDA, October 1990.

3. ''Guidance on Premarket Notification [510(k)] Submission for Short-Term and Long-Term Intravascular Catheters,'' FDA, March 1995.

List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 880.5965 is added to subpart F to read as follows:

§ 880.5965 Subcutaneous, implanted, intravascular infusion port and catheter.

(a) *Identification.* A subcutaneous, implanted, intravascular infusion port and catheter is a device that consists of a subcutaneous, implanted reservoir that connects to a long-term intravascular catheter. The device allows for repeated access to the vascular system for the infusion of fluids and medications and the sampling of blood. The device consists of a portal body with a resealable septum and outlet made of metal, plastic, or combination of these materials and a long-term intravascular catheter is either preattached to the port or attached to the port at the time of device placement. The device is available in various profiles and sizes and can be of a single or multiple lumen design.

(b) *Classification.* Class II (special controls) Guidance Document: ''Guidance on 510(k) Submissions for Implanted Infusion Ports,'' FDA October 1990.

3. Section 880.5970 is added to subpart F to read as follows:

§ 880.5970 Percutaneous, implanted, long-term intravascular catheter.

(a) *Identification.* A percutaneous, implanted, long-term intravascular catheter is a device that consists of a slender tube and any necessary connecting fittings, such as luer hubs, and accessories that facilitate the placement of the device. The device allows for repeated access to the vascular system for long-term use of 30 days or more, and it is intended for administration of fluids, medications, and nutrients; the sampling of blood; and monitoring blood pressure and temperature. The device may be constructed of metal, rubber, plastic, composite materials, or any combination of these materials and may be of single or multiple lumen design.

(b) *Classification.* Class II (special controls) Guidance Document: ''Guidance on Premarket Notification [510(k)] Submission for Short-Term and Long-Term Intravascular Catheters.''

Dated: May 23, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–14698 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Approved Publications and Tables for Use in Applying Revised Royalty Valuation Regulations for Federal Oil

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of approved publications.

SUMMARY: As required by revised Federal oil valuation regulations, the Minerals Management Service (MMS) has approved three spot price publications that royalty payors should use to value oil produced from Federal leases not sold at arm's length.

EFFECTIVE DATE: June 1, 2000.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: David Domagala, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, Mail Stop 3151, Denver, Colorado 80225, telephone number (303) 275–7255 or fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: MMS published its revised regulations establishing oil value for royalty due on Federal leases in the **Federal Register** on March 15, 2000 (65 FR 14022), effective June 1, 2000. The primary changes in the revised regulations affect Federal lessees who value oil not sold at arm's length. The rule provides that the primary means of valuing crude oil not sold at arm's length is an adjusted spot price, except in the Rocky Mountain Region, where use of an adjusted spot price for valuation purposes is the third valuation benchmark (30 CFR 206.103(b)(4))(65 FR 14091). The applicable spot price is the one for the oil most closely representing the lease production in terms of physical proximity and quality parameters. The lessee may select the spot price from any MMS-approved publication; however, once the lessee selects a publication for a geographical area (California/Alaska, the Rocky Mountain Region, or the rest of the country), it must continue to use that same publication for 2 years in that area.

In § 206.104 of the final rule (65 FR 14092) for establishing oil value for royalty due on Federal leases, MMS explained that ''approved publications'' must be:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of Alaska North Slope (ANS) and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

Additionally, MMS established that:

(1) Any publication may petition MMS to be added to the published list of acceptable publications.

(2) MMS will reference the tables a lessee must use in the approved publications to determine the associated index prices.

(3) MMS may revoke its approval of a particular publication if it determines that the prices published in the publication do not accurately represent spot market values.

MMS has verified that the publications listed below meet approval criteria based on input from staff of the publication itself, as well as information from marketers, auditors and industry consultants. MMS also examined and compared historical published spot prices from all three of the approved publications to ensure comparability and consistency. The approved publications and applicable tables are as follows:

- *Platt's Oilgram Price Report* (The same spot prices appear in *Platt's Global Alert, Platt's Crude Oil Marketwire,* and the soon-to-be-published *Platt's U.S. Crudewire.*) Use the spot prices found in the ''Crude Price Assessments'' section.
- *Petroleum Argus Americas Crude* (The same spot prices appear in *Argus Crude, Argus Americas Crude Datafile, Argus Crude Datafile.*) Use the spot prices found in the ''WTI Cushing,'' ''US Gulf Coast,'' ''US Midcontinent,'' and ''US West Coast'' sections.
- *Bloomberg Oil Buyers Guide Petroleum Price Supplement* (The same spot prices appear on the *Bloomberg Energy Web Site,* and in *Bloomberg Professional.*) Use the spot prices found in the ''Worldwide Crude Price Snapshot'' section.

If any of these entities use identical spot price quotes in other of their publications or distributions (such as electronic bulletin boards, newsletters, etc.), they are also approved. MMS will

monitor these three publications to ensure that they continue to meet the approval criteria.

Representatives of any other publication who wish to obtain MMS approval of their publication may contact MMS at the address shown above in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: June 6, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–14778 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–00–016]

RIN 2115–AA97

Safety Zone; Chickahominy River, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Two Rivers Yacht Club fireworks display to be held at Barret's Point at the mouth of the Chickahominy River, Williamsburg, Virginia. This action will restrict vessel traffic on the Chickahominy River within a 500-foot radius of the fireworks display, which will be fired from shore. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from 8 p.m. until 11:30 p.m. on July 4, 2000.

ADDRESSES: You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, VA, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–016), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. We were not notified of the event with sufficient time to publish an NPRM, allow for comments, and publish a final rule in sufficient time to allow notice to the public for the fireworks display. In previous years, this event and similar ones have been held without incident and without comment from the public regarding the Coast Guard's establishment of limited safety zones around fireworks displays.

Background and Purpose

The Coast Guard is establishing a temporary safety zone for the Two Rivers Yacht Club fireworks display to be held at Barret's Point, at the mouth of the Chickahominy River, Williamsburg, Virginia. The safety zone will restrict vessel traffic on the Chickahominy River within a 500-foot radius of the fireworks display, which will be fired from shore, in approximate position 37° 14.51′ N, 076° 52.10′ W. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone is effective from 8 p.m. until 11:30 p.m. on July 4, 2000. Additional public notifications will be made prior to the event via marine information broadcasts.

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). This temporary final rule only affects a limited area for three and a half hours, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Chickahominy River within 500 feet of a shoreside fireworks display at Barret's Point, located at the mouth of the Chickahominy River in approximate position 37° 14.51′ N, 076° 52.10′ W.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This temporary final rule only affects a limited area for three and a half hours, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 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 M16475.1C, this rule is categorically excluded from further environmental documentation. This regulation will have no impact on the environment.

List of Subjects

Harbors, Marine safety, Navigation (water), Reporting 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—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T05–016 to read as follows:

165.T05–013 Safety Zone; Chickahominy River, Virginia.

(a) *Location.* The following area is a safety zone: All waters of the Chickahominy River, within a 500-foot radius of a shoreside fireworks display in approximate position 37°14.51′ N, 076°52.10′ W.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations:* (1) All persons are required to comply with the general regulations governing safety zones found in section 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through this safety zone must first request authorization from the Captain of the Port. The Coast Guard representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Effective Date:* This section is in effect from 8 p.m. until 11:30 p.m. on July 4, 2000.

Dated: June 5, 2000.

J.E. Schrinner,

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

[FR Doc. 00–14858 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 685

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On November 1, 1999 amendments to regulations governing the William D. Ford Federal Direct Loan Program were published in the **Federal Register** (64 FR 59016). This document corrects the designation of the section amended in item 24 and adds a word inadvertently dropped from § 685.306(a) as amended in item 26 on page 59044. The change made in item 24 should have been made to § 685.216, rather than to § 685.215, because § 685.215 was previously redesignated as § 685.216 in separate amendments published in the same issue of the **Federal Register** (64 FR 58969).

DATES: These regulations, as corrected, are effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Nicki Meolo, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–28315, published in the **Federal Register** on November 1, 1999 (64 FR 59016), in item 24 on page 59044, the reference to ''Section 685.215'' is corrected to read ''Section 685.216'' and the number and heading of the amended section are corrected to read ''§ 685.216 *Consolidation.*'' In item 26 on page 59044, in the amended text of § 685.306(a), in the third column, first line, add the word ''portion'' after the word ''that'' and before the word ''of.''

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 7, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–14823 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV—6013a; FRL–6714–2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the West Virginia hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the ''plan'') submitted on August 18, 1999 by the West Virginia Division of Environmental Protection (WV DEP), and the subsequent plan amendment of April 19, 2000. The plan establishes emission limitations and other requirements for existing HMIWIs, and provides for the implementation and enforcement of those limitations and requirements.

DATES: This final rule is effective July 28, 2000 unless by July 13, 2000 adverse or critical comments are received. 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: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, 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 following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and the West Virginia Division of Environmental Protection, Office of Air Quality, 7012 MacCorkle Avenue, South East, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I through V and answers the questions posed below.

I. General Provisions
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What pollutant(s) will this action control?
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What general requirements must I meet under the approved EPA 111(d)/129 plan?
What emissions limits must I meet, and in what time frame?
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What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?
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IV. Final EPA Action
V. Administrative Requirements

I. General Provisions

Q. What is EPA approving?

A. EPA is approving the WV 111(d)/129 plan (the ''plan'') for the control of air pollution emissions from hospital/medical/infectious waste incinerators (HMIWIs). The plan was developed by the WV DEP. On August 18, 1999 the WV DEP submitted its plan to EPA; and on April 19, 2000 submitted a plan amendment. EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

Q. What is a State/local 111(d)/129 plan?

A. Section 111(d) of the Clean Air Act (CAA) requires that ''designated'' pollutants, controlled under standards of performance for new stationary sources by Section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT-based EG document, and then requires states to develop 111(d)/129 plans that implement and enforce the EG requirements. The HMIWI EG at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of both Sections 111(d) and 129 of the CAA. These requirements must be incorporated into a State/local 111(d)/129 plan that is ''at least as protective'' as the EG, and is Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, ''Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plans, EPA–456/R–97–007, November, 1997.''

Q. What pollutant(s) will this action control?

A. The September 15, 1997 promulgated EG, Subpart Ce, are applicable to all existing HMIWIs (*i.e.*, the designated facilities) that emit organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury, particulate matter), opacity, and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). This action establishes emission limitations for each of these pollutants.

Q. What are the expected environmental and public health benefits from controlling HMIWI emissions?

A. HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone levels, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium, and lead include probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings.

II. Federal Requirements the West Virginia HMIWI 111(d)/129 Plan Must Meet for Approval

Q. What general requirements must the WV DEP meet to receive approval of its WV 111(d)/129 plan?

A. The plan must meet the requirements of both 40 CFR part 60, subparts B, and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for

designated pollutants and facilities. The EG, Subpart Ce, and the related new source performance (NSPS), Subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with Sections 111(d) and 129 of the CAA. In general, the applicable provisions of Subpart Ec relate to compliance and performance testing, monitoring, reporting, and recordkeeping. More specifically, the WV plan must meet the requirements of (1) 40 CFR part 60, subpart Ce, Sections 60.30e through 60.39c, and the related Subpart Ec provisions; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

Q. What does the WV plan contain?

A. Consistent with the requirements of Subparts B, Ce and Ec, the WV plan contains the following elements:

1. A demonstration of West Virginia's legal authority to implement the plan;
2. Identification of the West Virginia enforceable mechanism, rule 45CSR24 ''To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators'';
3. Source and emission inventories, as required;
4. Emission limitation requirements that are no less stringent than those in Subpart Ce;
5. A source compliance schedule, including increments of progress, as required;
6. Source testing, monitoring, recordkeeping, and reporting requirements;
7. HMIWI operator training and qualification requirements;
8. Requirements for development of a Waste Management Plan;
9. Records of the public hearing on the WV plan;
10. Provision for the WV DEP submittal to EPA of annual reports on progress in plan enforcement; and
11. A Title V permit application due date.

On August 3, 1998, the WV DEP filed 45CSR24, ''To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators'' with the Legislative Rulemaking Review Committee (LRMC) for its recommendation and approval to the 1999 Legislature. Legislative approval was received and the regulation became effective on June 1, 1999. Subsequent regulation amendments, which correct typographical errors and clarify the final compliance date, were also approved and became effective on May 1, 2000. The regulation applies to existing HMIWIs and incorporates by reference (IBR) related and applicable new source performance standards, Subpart Ec.

Q. Does the WV 111(d)/129 plan meet all EPA requirements for approval?

A. Yes. The WV DEP has submitted a plan that conforms to all EPA Subpart B and Ce requirements. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Requirements Affected HMIWI Owners/Operators Must Meet

Q. How do I determine if my HMIWI is a designated facility subject to the WV 111(d)/129 plan?

A. If construction commenced on your HMIWI on or before June 20, 1996, your HMIWI is classified as an existing or designated facility that may be subject the plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under Section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to EPA's municipal waste combustor rule; pyrolysis units; and cement kilns.

Details regarding applicability and exemptions provisions are stipulated in WV regulation 45SCR24 § 3.

Q. As an affected HMIWI owner/operator, what general requirements must I meet under the approved EPA 111(d)/129 plan?

A. In general, the West Virginia HMIWI regulation establishes the following requirements:

- Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO_2), nitrogen oxides (NO_X), lead (Pb), cadmium (Cd), and mercury (Hg)
- Compliance and performance testing
- Operating parameter monitoring
- Operator training and qualification
- Development of a waste management plan
- Source testing, recordkeeping and reporting
- A Title V permit

A full and comprehensive statement of the above requirements is incorporated in the WV DEP regulation 45CSR24.

Q. What emissions limits must I meet, and in what time frame?

A. You must install an emissions controls system capable of meeting the MACT emission limitations for the pollutants identified above. The pollutant emission limitations are stipulated in Table 1 of 45CSR24 §§ 4.3.a. and g.; and §§ 4.4.a, and i.. Compliance is required within one year after the effective date of EPA approval of the WV 111(d)/129 plan. With adequate justification, you may petition the WV DEP for a compliance schedule extension that does not extend beyond September 15, 2002. Petitions must be submitted no later than nine months after the effective date of EPA plan approval. Petitions must include documentation of your analysis undertaken to support the need for an extension, and your evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis. Also, your extension petition must include increments of progress that are no less stringent than those specified in the plan and regulation, 45CSR24 § 7.2.

Q. Are there any operational requirements for my HMIWI and emissions control system?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by the HMIWI operators.

Failure to operate the HMIWI or APCD within certain established operating parameter limits constitutes an emissions violation for the controlled air pollutants. However, as a HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that your facility is meeting the required emission limitations, providing a repeat performance test is conducted in a timely manner.

A fully trained and qualified operator must be available at your facility during the operation of the HMIWI, or the operator must be readily available to the facility within one hour. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the Subpart Ec criteria referenced in 45CSR24 §§ 4.3.b and 4.4.b. Compliance must be achieved within one year of the effective date of EPA approval of the plan. Also, as a HMIWI owner/operator, you are required to develop and update

annually site-specific information regarding your facility's operations. Each of your HMIWI operators is required on an annual basis to review the updated operational and maintenance information.

The WV regulation IBR the applicable operational requirements of the EG and the related NSPS. See 40 CFR subpart Ec, §§ 60.56c, 60.53c, and 60.58c for details regarding these operational requirements.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below: You are required to conduct an initial stack test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. As noted above, operating parameter limits are monitored and established during the initial performance test. Monitored HMIWI operating parameters include, for example, waste charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (*e.g.,* carbon) flow rate, hydrogen chloride sorbent (*e.g.,* lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH. After the initial stack test, compliance testing is then required annually to determine compliance with the emission limitations for PM, CO, and HCl.

Recordkeeping and reporting are required in order to document (1) the results of the initial and annual performance tests, (2) the monitoring of site-specific operating parameters, (3) compliance with the operator training and qualification requirements, and (4) the development of the waste management plan. Records must be maintained for at least five years.

The WV regulation IBR the applicable testing, monitoring, recordkeeping, and reporting requirements of the EG and related NSPS. See 40 CFR subpart Ec, §§ 60.56c, 60.57c, and 60.58c, respectively for details regarding these requirements.

Q. Is there a requirement for obtaining a Title V permit?

A. Yes, affected facilities are required to submit a complete Title V application to the WV DEP no later than September 15, 2000.

IV. Final EPA Action

The WV 111(d)/129 plan for controlling HMIWI emissions is approvable. This approval does not include provisions, such as siting and fugitive emission requirements, that relate solely to facilities subject to the NSPS, and are not referenced in the EG.

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the WV 111(d)/129 plan for the control of HMIWI emissions from designated facilities. As provided by 40 CFR § 60.28(c), any revisions to the WV plan or associated regulations will not be considered part of the applicable plan until submitted by the WV DEP in accordance with 40 CFR § 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

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 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective July 28, 2000 without further notice unless the Agency receives relevant adverse comments by July 13, 2000. If 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 on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 28, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. 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).

C. 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 August 14, 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 approving the West Virginia 111(d)/129 plan for HMIWI may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

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

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

40 CFR part 62, subpart XX, is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. A new center heading and §§ 62.12150, 62.12151, and 62.12152 are added to Subpart XX to read as follows:

Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs)—SECTION 111(d)/129 Plan

§ 62.12150 Identification of plan.

Section 111(d)/129 plan for HMIWIs and the associated West Virginia (WV) Department of Environmental Protection regulations, as submitted on August 18, 1999, and as amended on April 19, 2000.

§ 62.12151 Identification of sources.

The plan applies to all existing WV HMIWI for which construction was commenced on or before June 20, 1996.

§ 62.12152 Effective date.

The effective date of the plan is July 28, 2000.

[FR Doc. 00–14766 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT–001a; FRL–6714–4]

Clean Air Act Full Approval of Operating Permit Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating full approval of the operating permit program submitted by the State of Montana. Montana's operating permit program was submitted for the purpose of meeting the federal Clean Air Act (Act) directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

DATES: This direct final rule is effective on August 14, 2000 without further notice, unless EPA receives adverse comment by July 13, 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: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Air and Radiation Program, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466 and are also available during normal business hours at the Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, 8P–AR, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202–2466, (303) 312–6435.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act (''the Act'') as amended (42 U.S.C. 7401 *et seq.*), EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act directs states to develop and submit operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. § 7661a) and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. The State of Montana was granted final interim approval of its program on May 11, 1995 (see 60 FR 25143) and the program became effective on June 12, 1995. Interim approval of the Montana program expires on December 1, 2001.

II. Analysis of State Submission

The Governor of Montana submitted an administratively complete Title V operating permit program for the State of Montana on March 29, 1994. This program, including the operating permit regulations (Title 16, Chapter 8, Sub-Chapter 20, Sections 16.8.2001 through 16.8.2025, inclusive, of the

Administrative Rules of Montana (ARM)), substantially met the requirements of part 70. EPA deemed the program administratively complete in a letter to the Governor dated May 12, 1994. The program submittal included a legal opinion from the Attorney General of Montana stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the State would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration.

EPA's comments noting deficiencies in the Montana program were sent to the State in a letter dated October 3, 1994. The deficiencies were segregated into those that would require corrective action prior to interim program approval, and those that would require corrective action prior to full program approval. The State committed to address the program deficiencies that would require corrective action prior to interim program approval in a letter dated October 20, 1994. The State submitted these corrective actions with letters dated March 30, and April 5, 1995. EPA reviewed these corrective actions and determined them to be adequate for interim program approval.

On January 15, 1998, Montana amended its operating permit program to make the corrections identified as necessary in the May 11, 1995 **Federal Register** notice of final interim approval. These program amendments, recodified at Title 17, Chapter 8, Sub-Chapter 12, Sections 1201, 1210, and 1213, ARM, were approved and adopted by the Montana Board of Environmental Review on January 15, 1998. The revised program regulations adequately addressed the problems identified in the May 11, 1995 **Federal Register** notice as requiring corrective action prior to full program approval. The State also submitted evidence of proper adoption of the revisions to its program regulations and a revised Attorney General's opinion dated July 31, 1998. The revised program and a request for full approval were submitted to EPA in a letter from the Governor of Montana dated February 4, 1999. EPA notified Montana, in a letter to the Department of Environmental Quality (DEQ) dated April 1, 1999, of two additional changes required for final approval. The DEQ revised the administrative rules to implement the two requested changes at Title 17, Chapter 8, Sub-Chapter 12, ARM. These amendments to Sub-Chapter 12 were approved and adopted by the Board on March 17, 2000. On April 12, 2000, the Governor of Montana submitted the revised program, with proof of proper adoption, and requested full approval of its operating permit program.

Areas in the Montana program that were identified by EPA as deficient and the State's corrective actions for full program approval consist of the following:

(1) The definition of administrative permit amendment allowed the department to exercise discretion in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. This did not satisfy the criteria for an administrative permit amendment listed in 40 CFR 70.7(d)(1)(iii), which require that only requirements for more frequent monitoring or reporting may be processed through an administrative permit amendment. Correction: The State deleted the problematic section of the administrative permit amendment definition, Section 17.8.1201(1)(d), ARM.

(2) The definition of administrative permit amendment allowed the State to determine if other types of permit changes not listed in the definition of administrative permit amendment could be incorporated into a permit through the administrative permit amendment process. This did not meet requirements of 40 CFR 70.7(d)(1)(vi). Correction: The State modified Section 17.8.1201(1), ARM, part of the administrative permit amendment definition, to state: ''(e) incorporates any other type of change which the department and EPA have determined to be similar to those revisions set forth in (a) through (d) above.''

(3) The definition of ''insignificant emissions unit'' included an emission threshold of 15 tons per year of any pollutant other than a hazardous air pollutant. EPA did not consider this to be a reasonable level at which to exempt emissions units from title V operating permit requirements. Correction: The State lowered the trigger level of 15 tons per year to 5 tons per year in the definition of ''insignificant emissions units'' to assure that the term will not encompass activities that are subject to applicable requirements (see Section 17.8.1201(22)(a)(i), ARM).

(4) The State was required to revise or delete Section 17.8.1201(24)(a)(ii), ARM, so that rules and requirements imposed under the State Implementation Plan (SIP) would not be included in the definition of ''non-federally enforceable.'' Correction: The State originally revised Section 17.8.1201(24)(a)(ii) to exclude only regulations that are not federally enforceable (not in the SIP). The State adopted an additional correction to this section on March 17, 2000, which is explained below.

(5) The State was required to include a severability clause in Sub-Chapter 12 consistent with 40 CFR 70.6(a)(5) of the federal permitting regulation. Correction: The State revised Section 70.8.1210(2)(l), ARM, to include a severability clause, which states ''If any provision of a permit is found to be invalid, all valid parts that are severable from the invalid part remain in effect. If a provision of a permit is invalid in 1 or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid applications.''

(6) The State was required to provide an Attorney General's opinion verifying Montana's authority to use any monitoring data to determine compliance and for direct enforcement or to revise the State's SIP-approved regulations to provide authority to use any monitoring data to determine compliance and for direct enforcement. Correction: The Attorney General's opinion and Section 17.8.1213(2) were amended to clarify Montana's authority. The revised opinion was submitted with the Governor's letter, dated February 4, 1999.

(7) The Attorney General's opinion was not clear regarding the State's authority to terminate permits. The State was required to provide an Attorney General's interpretation that Montana's statutory authority extends to ''terminating'' permits. Correction: This was clarified in the revised Attorney General's opinion.

(8) The State was required to demonstrate to EPA that it had the ability to make case-by-case MACT determinations pursuant to section 112(j) of the Act. Correction: This was adequately addressed in the revised Attorney General's opinion.

(9) The State was required to certify its ability to require annual certifications from part 70 sources regarding proper implementation of their risk management plans (RMP) and to provide a compliance schedule for sources that fail to submit the required RMP. Correction: The State will include a statement listing 40 CFR 68.215(a) as an applicable requirement in all Title V operating permits.

(10) The State was required to clarify that it has the authority to terminate or revoke and reissue permits in all circumstances in which cause to do so exists or amend Section 17.8.1210(2)(a) to eliminate any provisions that may be construed to limit ''cause'' in an unacceptable manner. Correction:

Section 17.8.1210(2)(a) has been revised to include: ''Permits may be terminated or revoked and reissued for cause. Appropriate 'cause' for permit termination is noncompliance with permit terms or conditions that is continuing or substantial in nature and scope.''

Two additional corrections, requested in the April 1, 1999 letter from EPA to the DEQ, are as follows:

(1) The revised definition of ''non-federally enforceable requirements'' in Section 17.8.1201(24)(a), ARM, included ''(ii) any term, condition or other requirement contained in any air quality preconstruction permit issued by the department under this chapter that is not contained in the Montana State implementation plan approved or promulgated by the administrator through rulemaking under title I of the FCAA.'' This was required to be changed or deleted as it implied that the terms and conditions of a preconstruction permit are not federally enforceable, unless they are contained in the Montana SIP or EPA regulation. In fact, every permit issued under a SIP-approved permit program is federally enforceable, and every term and condition of the permit is federally enforceable. Correction: The State has revised Section 17.8.1201(24) to delete this language in the definition of the phrase ''non-federally enforceable requirements.''

(2) Section 17.8.1225(4), ARM, incorrectly applied the permit shield to all administrative permit amendments. The permit shield provided by 40 CFR Part 70 applies only to permit actions that have gone through public review. Therefore, Section 17.8.1225(4) was required to be revised to say that the permit shield does not extend to administrative permit amendments except as allowed by 40 CFR 70.7(d)(4). Correction: The State revised Section 17.8.1225(4) to state that the permit shield does not apply to administrative permit amendments.

III. Final Action

In this document, EPA is granting full approval of the Montana part 70 operating permits program for all areas within the State except the following: any sources of air pollution located in ''Indian Country'' as defined in 18 U.S.C. 1151, including the following Indian reservations in the State: Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See section 301(d)(2)(B) of the Act; see also 63 FR 7254 (February 12, 1998). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the Act; see also 58 FR 54364 (Oct. 21, 1993).

The EPA is publishing this rule without prior proposal because the State is currently implementing its part 70 program and the Agency views this as a noncontroversial action 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 grant full approval of the operating permit program submitted by the State of Montana should adverse comments be filed. This rule will be effective August 14, 2000 without further notice unless the Agency receives adverse comments by July 13, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 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

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

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

D. Executive Order 13084

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

governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this 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 costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated 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 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 August 14, 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 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: June 2, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, Region VIII.

40 CFR part 70, is amended as follows:

PART 70—[AMENDED]

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

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

2. In appendix A to part 70 the entry for Montana is amended by adding paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Montana

* * * * *

(b) The Montana Department of Environmental Quality submitted an operating permits program on March 29, 1994; effective on June 12, 1995; revised January 15, 1998, and March 17, 2000; full approval effective on August 14, 2000.

* * * * *

[FR Doc. 00–14768 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6715–4]

Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act (SDWA) Amendments.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: Because we received adverse comments, EPA is withdrawing the direct final rule regarding the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfectant and Disinfection Byproducts Rule, and the Primacy Rule that published on April 14, 2000 (65 FR 20304).

In the direct final rule, we stated that if we received adverse comments by May 15, 2000, we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments. We will address those comments in a final rule based

upon the proposed rule also published on April 14, 2000 (65 FR 20314).

Because of the degree of public interest in the rule, we are reopening the comment period on the proposed rule. For additional information, see the document that reopens the comment period, which is published in the ''Proposed Rules'' section of this issue of the **Federal Register**.

DATES: The direct final rule amending 40 CFR parts 141 and 142, published on April 14, 2000 (65 FR 20304), is withdrawn as of June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. EST.

Dated: June 8, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–14886 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 87]

RIN 3090–AH18

Federal Travel Regulation; Maximum Per Diem Rates and Other Travel Allowances; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States (CONUS) contained in a final rule appearing in part III of the **Federal Register** of Thursday, December 2, 1999 (64 FR 67670). The rule, among other things, increased/decreased the maximum lodging amounts in certain existing per diem localities, added new per diem localities, and removed a number of previously designated per diem localities. A correction published on Friday, May 19, 2000 (65 FR 31823), corrected the seasonal dates and lodging rates for Aspen, Colorado but failed to show changes this caused in the amounts of the maximum per diem rates.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy (MTT), Washington, DC 20405; telephone 202–501–4857.

SUPPLEMENTARY INFORMATION: In rule document 00–12340 beginning on page 31823 in the issue of Friday, May 19, 2000 make the following corrections:

Appendix A to Chapter 301 [Corrected]

On page 31825, under the State of Colorado, city of Aspen, the maximum per diem rates in column five are corrected as follows:

1. For the entry ''April 1–May 31,'' correct ''186'' to read ''114''.

2. For the entry ''June 1–December 31,'' correct ''114'' to read ''186''.

Page 31825, as corrected, reads as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

BILLING CODE 6820–34–P

Per diem locality: Key city[1]	County and/or other defined location [2], [3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(October 1-May 31)		69		38		107
San Mateo/Redwood City	San Mateo	99		42		141
Santa Barbara	Santa Barbara	99		38		137
Santa Cruz	Santa Cruz					
(June 1-September 30)		99		42		141
(October 1-May 31)		68		42		110
Santa Rosa	Sonoma	65		42		107
Santa Monica	City limits of Santa Monica (see Los Angeles)					
(June 1-September 30)		110		38		148
(October 1-May 31)		99		38		137
South Lake Tahoe	El Dorado (see also Stateline, NV)	108		42		150
Sunnyvale/Palo Alto/San Jose	Santa Clara	125		46		171
Tahoe City	Placer	128		42		170
Truckee	Nevada	69		42		111
Visalia	Tulare	58		38		96
West Sacramento	Yolo	64		30		94
Yosemite National Park	Mariposa					
(May 1-October 31)		100		46		146
(November 1-April 30)		76		46		122
COLORADO						
Aspen	Pitkin					
(January 1-March 31)		163		46		209
(April 1-May 31)		68		46		114
(June 1 December 31)		140		46		186
Boulder	Boulder					
(May 1-October 15)		90		42		132
(October 16-April 30)		79		42		121
Colorado Springs	El Paso					
(May 15-September 14)		73		38		111
(September 15-May 14)		59		38		97
Cortez	Montezuma	64		34		98
Crested Butte	City limits of Crested Butte (see Gunnison)	95		42		137
Denver	Denver, Adams, and Arapahoe	83		42		125
Durango	La Plata					
(June 1-October 31)		95		38		133
(November 1-May 31)		61		38		99
Fort Collins	Larimer (except Loveland)	59		34		93
Gunnison	Gunnison (except Crested Butte)					
(June 15-September 30)		69		34		103
(October 1-June 14)		60		34		94
Jefferson County	Jefferson County	69		34		103
Loveland	City limits of Loveland (see Larimer County)	69		30		99
Montrose	Montrose	59		34		93
Pueblo	Pueblo					
(June 1-September 30)		75		34		109
(October 1-May 31)		58		34		92
Silverthorne/Keystone	Summit					
(December 1-April 1)		170		38		208
(April 2-November 30)		130		38		168

Dated: June 7, 2000.

James L. Harte,

Travel Team Leader, Travel Management Policy Division.

[FR Doc. 00–14796 Filed 6–12–00; 8:45 am]

BILLING CODE 6820–34–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 00–141]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the Commission's rules governing Cellular Radiotelephone Service (cellular service) to permit spectrum disaggregation by cellular licensees. In addition, the Commission maintains its existing geographic partitioning rules for initial cellular licensees, and extends partitioning rules to unserved area licensees. This document also resolves several related issues relevant to cellular partitioning and disaggregation.

DATES: Effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418–0896.

SUPPLEMENTARY INFORMATION: *Synopsis of the Second Report and Order.* ''Partitioning'' is the assignment of geographic portions of a radio license along geopolitical or other boundaries. ''Disaggregation'' is the assignment of discrete portions or ''blocks'' of spectrum licensed to a geographic licensee or other qualifying entity. The Commission has previously examined partitioning and disaggregation for many Commercial Mobile Radio Services (CMRS) on a service-by-service basis, and has adopted geographic partitioning and spectrum disaggregation rules for several services. In the *Further Notice of Proposed Rulemaking* in this proceeding, 62 FR 696 (January 6, 1997), the Commission tentatively concluded that it is now appropriate to consider permitting full partitioning and disaggregation in the cellular service.

2. The Commission concludes that modifying its cellular rules to allow disaggregation will promote competition and further regulatory symmetry between cellular and other CMRS licensees. Extending flexible disaggregation rules to cellular will increase carriers' flexibility to tailor their service offerings to meet market demands, thus increasing competition and enhancing the efficient use of spectrum. The Commission further finds that there are no technical or other constraints unique to the cellular service that would make disaggregation either impractical or administratively burdensome. The Commission therefore modifies its rules to permit cellular licensees to disaggregate portions of their spectrum to other eligible entities. In addition, the Commission declines to adopt minimum standards regarding the amount of spectrum that cellular licensees may disaggregate.

3. With regard to partitioning, the Commission decides to retain its existing partitioning rules for initial cellular licensees, and to provide for partitioning by unserved area licensees. The Commission recognizes that the current cellular partitioning rules are different from the rules for geographically licensed services because the rules restrict cellular partitioning outside the licensee's Cellular Geographic Service Area (CGSA) after the initial five-year buildout period. However, this restriction ensures that the cellular partitioning rules do not conflict with the unserved area rules, and the Commission finds that the rules are sufficiently flexible so as not to place cellular licensees at a competitive disadvantage compared to other CMRS. The Commission also believes that cellular unserved area licensees should have the ability to partition their service areas. As in the case of initial cellular licensees, the Commission will allow cellular unserved area licensees to partition within their designated licensing areas during the initial buildout period of the license. After the expiration of the 12-month buildout period, an unserved area licensee may not partition outside of the licensing area established as a result of the buildout process.

4. The Commission retains its existing cellular construction rules as they apply to partitioning. These rules provide sufficient flexibility for cellular licensees to build out their markets and to respond to demands for service. Thus, where a cellular licensee partitions its license prior to the expiration of the relevant buildout period, each partitionee will be responsible for completing the buildout in its partitioned area within the remainder of the original buildout period. Any area that remains unbuilt at the conclusion of the buildout period will revert to the Commission and be available for unserved area licensing. With respect to disaggregation, the parties will be required to certify in their disaggregation application which party will be responsible for building out the licensed area.

5. The Commission adopts its proposal to permit combined partitioning and disaggregation for cellular. The Commission also determines that the license terms for partitioned and disaggregated cellular licenses will be limited to the remaining term of the underlying licenses, and that partitionees and disaggregatees may obtain renewal expectancy on the same basis as initial cellular licensees and other CMRS licensees. Finally, the Commission declines to change its current procedures for reviewing and licensing cellular partitioning transactions, and adopts these procedures for reviewing and licensing disaggregation transactions.

Final Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking (Further Notice) in WT Docket No. 96–148.[1] The Commission sought written public comment on the proposals in the Further Notice, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[2]

A. Need for and Purpose of This Action

7. In this document, we modify our rules for the Cellular Radiotelephone Service (cellular) to permit partitioning and disaggregation for all licensees in these services. The rules adopted herein also implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D) and reduce entry barriers for small businesses in accordance with 47 U.S.C. 257. With flexible partitioning and disaggregation, additional entities, including small businesses, may participate in the

[1] Geographic Partitioning and Spectrum Disaggregation by Commericial Mobile Radio Services Licensees, WT Docket No. 96–148, FCC 96–287, Notice of Proposed Rulemaking, 11 FCC Rcd. 10187 (1996).

[2] Public Law 104–121, 110 Stat. 847 (1996) (CWAA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) codified at 5 U.S.C. 601, *et seq.*)

provision of cellular service without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring ''less'' than the current license will presumably be a flexible and less expensive alternative for entities desiring to provide these services.

B. Description and Number of Small Entities Involved

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.[3] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[4] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[5] Nationwide, there are 275,801 small organizations.[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act.[7] Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[8]

9. The rules adopted in this document will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding cellular licenses who choose to partition and/or disaggregate, and small businesses that may acquire licenses through partitioning and/or disaggregation. We have not developed a definition of small entities applicable to cellular licensees.

Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[9] The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[10]

10. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.[11] Therefore, even if all twelve of these large firms were cellular telephone companies, nearly all of the cellular carriers were small businesses under the SBA's definition. We assume, for purposes of this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data that we publish annually in our Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Services (PCS) licensees in one group. According to the data released in November 1997, there are 804 companies reporting that they engage in cellular or PCS service.[12] It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, we are unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this FRFA, we estimate that there are fewer than 804 small cellular service carriers.

C. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. The rules adopted in this document will impose reporting and recordkeeping requirements on small businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Any applicant requesting such a license, will provide this information in a one-time filing. The applicant will submit this information on a FCC Form 490 Application for Assignment of Authorization or Consent to Transfer of Control of License. The applicant will also submit an FCC Form 430 Licensee Qualification Report if one is not already on file with us, and an FCC Form 600 Application for Mobile Radio Service Authorization. These forms are currently in use and have already received Office of Management and Budget clearance. We estimate that the average burden on the applicant is three hours for the information necessary to complete these forms. We further estimate that seventy-five percent of the respondents (which may include small businesses) will contract out the burden of responding. Finally, we estimate that it will take approximately thirty minutes to coordinate information with those contractors. The remaining twenty-five percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

D. Steps Taken To Minimize Burdens on Small Entities

12. The rules adopted in this document are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services and are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

13. Allowing non-restricted partitioning of licenses will facilitate market entry by parties who may lack the financial resources for participation in auctions, including small businesses. Some small businesses may have been unable to obtain cellular licenses through sale due to high asking prices. By eliminating this restriction and allowing flexible partitioning, small businesses will be able to obtain partitioned licenses for smaller service areas at presumably reduced costs, thereby providing a method for small businesses to enter the cellular marketplace.

14. Similarly, allowing immediate disaggregation of cellular licenses will

[3] 5 U.S.C. 603(b)(3), 604(a)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(4).

[6] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632).

[8] 15 U.S.C. 632.

[9] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[10] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[11] Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[12] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

facilitate the entry of new competitors to the provision of these services, many of whom will be small businesses seeking to acquire a smaller amount of spectrum at a reduced cost. Additionally, allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of cellular spectrum tailored to meet the needs of their proposed service.

E. Significant Alternatives Considered and Rejected

15. We considered and rejected several alternative proposals concerning partitioning and disaggregation:

- We considered and rejected the option of continuing to disallow disaggregation of cellular spectrum. We concluded that permitting disaggregation would promote competition and further regulatory symmetry, and that there were no technical or other constraints that would make cellular disaggregation either impractical or administratively burdensome.
- We declined to establish any minimum amount of spectrum that can be disaggregated. We concluded that allowing flexibility in disaggregation would promote more efficient use of spectrum and permit deployment of a wider array of services.
- We declined to allow additional flexibility in our cellular partitioning rules. We concluded that our existing rules are sufficiently flexible so as not to place cellular licensees at a competitive disadvantage compared to other CMRS, and that additional flexibility would be inconsistent with our cellular unserved area rules.
- We declined to apply a new license term to partitioned license areas or disaggregated spectrum. We found that allowing parties to ''re-start'' their license term would effectively allow a licensee to extend its license term and could lead to circumvention of our license term rules.

F. Report to Congress

16. We shall include a copy of this Final Regulatory Flexibility Analysis, along with this Second Report and Order, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

G. Ordering Clauses

17. Accordingly, pursuant to the authority of sections 4(i), 257, 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(g), 303(r), and 332(a), part 22 of the Commission's Rules, 47 CFR 22.1, *et seq., Is Amended* as set forth in the rule changes.

18. The rules adopted herein will become effective July 13, 2000. This action is taken pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j).

List of Subjects in 47 CFR Part 22

Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Add § 22.948 to read as follows:

§ 22.948 Partitioning and Disaggregation.

(a) *Eligibility.* (1) *Generally.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 1.948 of this chapter. Cellular licensees may partition or disaggregate their spectrum to other qualified entities.

(2) *Partitioning.* During the five year build-out period, as defined in § 22.947, cellular licensees may partition any portion of their cellular market to other qualified entities. After the five year build-out period, cellular licensees and unserved area licensees may partition any portion of their Cellular Geographic Service Area (CGSA), as defined by § 22.911, to other qualified entities but may not partition unserved portions of their cellular market.

(3) *Disaggregation.* After the five year build-out period, as defined in § 22.947, parties obtaining disaggregated spectrum may only use such spectrum in that portion of the cellular market encompassed by the original licensee's CGSA and may not use such spectrum to provide service to unserved portions of the cellular market.

(b) *Disaggregation.* Cellular licensees and unserved area licensees may disaggregate spectrum in any amount.

(c) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of cellular licenses that propose combinations of partitioning and disaggregation.

(d) *License Term.* The license term for the partitioned license area and for disaggregated spectrum shall be the remainder of the original cellular licensee's or the unserved area licensee's license term provided for in § 22.144(a).

[FR Doc. 00–14872 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Risk Management

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule changes the NASA FAR Supplement (NFS) to emphasize considerations of risk management, including safety, security (including information technology security), health, export control, and damage to the environment, within the acquisition process. The interim rule addresses risk management within the context of acquisition planning, selecting sources, choosing contract type, structuring award fee incentives, administering contracts, and conducting contractor surveillance. Also, this interim rule provides that contractors not be paid award fee for any evaluation period in which there is a major breach of safety or security.

DATES: *Effective Date:* This rule is effective July 13, 2000.

Applicability Date: This rule applies to solicitations issued on or after July 13, 2000.

Comment Date: Comments should be submitted to NASA at the address below on or before August 14, 2000.

ADDRESSES: Interested parties should submit written comments to James H. Dolvin, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to jdolvin1@mail.hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, (202) 358–1279.

SUPPLEMENTARY INFORMATION:

A. Background

It is critically important for NASA to achieve mission success without

compromising safety. However, given that many of NASA's activities involve advanced research, aeronautics, and space flight, NASA cannot completely avoid risk. Therefore, risk must be managed, *i.e.,* comprehensively identified, analyzed, planned, tracked, controlled, communicated, and documented. While risk management is not a new acquisition concept, NASA has initiated a risk-based acquisition management initiative to re-focus on risk as a core acquisition concern. That initiative will be implemented by providing training to NASA and contractor personnel, consultation to NASA projects and programs, and updated policy and guidance through revisions to several of NASA's internal processes and guidelines. This interim rule implements that part of the initiative pertaining directly to the procurement process. Since NASA's activities often include contractor efforts, NASA's focus on safety and mission success must be conveyed in NASA contracts.

A proposed rule was published in the **Federal Register** at 64 FR 38880–84 on June 20, 1999. Comments were received from the Council of Defense and Space Industry Associations, the United Space Alliance, and the Jet Propulsion Laboratory. All comments were considered in the development of the interim rule. After reviewing the public comments, revisions were made to sections 1807.105, 1812.301, 1815.203–72, 1815.304.70, 1815.305, 1816.405–274, 1823.7001, 1852.223–73, and 1852.223–76. Proposed section 1852.223–75 was deleted. The most important of these revisions were (1) changes in requirements for written acquisition plans, (2) elimination of the requirement for a separate risk management plan in proposals, (3) changes in award fee evaluation factors, and (4) revisions to requirements for the Safety and Health Plan.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this rule simply focuses attention on risk management, an existing business practice, and does not impose any significant new requirements which might have an economic impact.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 41 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis of this determination is that many ongoing NASA activities involve significant risk factors, and that immediate implementation of the procedures described in this interim rule is necessary for identification and management of these risks. Also, the substance of this material was previously published for public comment in the **Federal Register** (64 FR 38880–84) on June 29, 1999. Public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Add section 1807.104 to read as follows:

1807.104 General procedures. (NASA supplements paragraph (a)).

(a) The acquisition planning team shall obtain input from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Their presence on the team shall help to ensure that all NASA acquisitions are structured in accordance with NASA safety, occupational health, environmental, export control, and security policy. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation of safety, occupational health, environmental, information technology, export control, and security concerns (See NPG 8715.3, NASA Safety Manual; NPG 7120.5, NASA Program and Project Management Processes and Requirements; NPG 2810.1, Security of Information Technology, and NPG 1620.1, Security Procedures and Guidelines, all available at www.nodis.hq.nasa.gov).

3. In section 1807.105, add paragraph (a)(7) to read as follows:

1807.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(7) Discuss project/program risks (see NPG 7120.5, NASA Program and Project Management Processes and Requirements). In addition to technical, schedule, and cost risks, the discussion shall include such considerations as: safety and security (including personnel, information technology, and facilities/property); the need to involve foreign sources (contractor and/or governmental), and risks of unauthorized technology transfer (see NPG 2190, NASA Export Control Program); and resource risk, including the necessary level and expertise of NASA personnel resources available to manage the project/program. For each area of risk identified, the discussion shall include a quantification of the relative magnitude (*e.g.,* high, medium, low) together with the specific actions taken to structure the acquisition approach to manage the risks throughout the acquisition process. For example, this discussion would identify those areas that have safety risk, discuss how safety is addressed in contract requirements and evaluated in the source selection, and how it will be managed and incentivized during contract performance. Decisions to accept, mitigate, track, and/or research risk factors shall be identified and documented as part of acquisition planning.

* * * * *

PART 1811—DESCRIBING AGENCY NEEDS

4. Add section 1811.101 to read as follows:

1811.101 Order of precedence for requirements documents. (NASA supplements paragraph (b))

(b) When establishing product descriptions in either a solicitation or contract, contracting officers shall include safeguards, as applicable, to ensure safety, security, and environmental protection.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

5. In section 1812.301, redesignate paragraph (f)(i)(F) as (G); redesignate paragraphs (f)(i)(G) through (J) as (f)(i)(J) through (M), add new paragraphs (f)(i)(F), (H), and (I), and redesignate paragraph (f)(i)(F) as (G) to read as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(F) 1852.223–70, Safety and Health.

* * * * *

(H) 1852.223–73, Safety and Health Plan.

(I) 1852.223–75, Major Breach of Safety and Security.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

6. In section 1815.201, amend paragraph (c)(6)(A) by adding the following sentence immediately before the last sentence to read as follows:

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) * * * Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. * * *

* * * * *

7. Add section 1815.203–72 to read as follows:

1815.203–72 Risk Management.

In all RFPs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

8. In section 1815.304–70, paragraphs (b)(4) and (d)(4) are added to read as follows:

1815.304–70 NASA evaluation factors.

* * * * *

(b) * * *

(4) If the solicitation requires the submission of a Safety and Health Plan (see 1823.7001(c) and NPG 8715.3, NASA Safety Manual, Appendix H), safety and health must be a consideration in the evaluation. For acquisitions valued at $10 million or more, or $25 million or more for commercial items, then the Mission Suitability factor, if used, shall include a subfactor for safety and health. Otherwise, use of that subfactor is optional.

* * * * *

(d) * * *

(4) The contracting officer shall evaluate the offeror's past performance in occupational health, security, safety, and mission success (*e.g.,* mishap rates and problems in delivered hardware and software that resulted in mishaps or failures) when these areas are germane to the requirement.

9. In section 1815.305, revise paragraph (a)(vi) to read as follows:

1815.305 Proposal evaluation.

(a) * * *

(vi) Any programmatic risk to mission success, *e.g.*, technical, schedule, cost, safety, occupational health, security, export control, or environmental. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, or as a result of the cost, schedule, and performance impacts associated with its approach. Risk evaluations must consider the probability of the risk occurring, the impact and severity of the risk, the timeframe when the risk should be addressed, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths, weaknesses, deficiencies, and numerical or adjectival ratings. Identified risks and the potential for cost impact shall be considered in the cost or price evaluation.

* * * * *

10. In section 1815.406–170, delete the ''and'' at the end of paragraph (c)(5); remove the period at the end of paragraph (c)(6) and add ''; and'' in its place; and add paragraph (c)(7) to read as follows:

1815.406–170 Content of the prenegotiation position memorandum.

* * * * *

(c) * * *

(7) Any risk management issues, *e.g.,* mission success, safety, occupational health, information technology, export control, security, and environmental risks.

* * * * *

PART 1816—TYPES OF CONTRACTS

11. In section 1816.405–274, paragraphs (c) through (h) are redesignated as paragraphs (d) through (i), and a new paragraph (c) is added to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(c)(1) The technical factor, if used, must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.405–273(a), an overall fee determination of zero for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.405–273(b), an overall fee determination of zero for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if a zero fee determination was made because of a major breach of safety or security.

(2) A major breach of safety consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

* * * * *

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

12. Revise section 1823.7001 to read as follows:

1823.7001 NASA solicitation provisions and contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223–70, Safety and Health, shall be included in all solicitations and contracts for—

(1) Negotiated acquisitions of $1,000,000 or more;

(2) Construction, repair, or alteration in excess of the simplified acquisition threshold;

(3) Acquisitions having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Acquisitions regardless of dollar amount when—

(i) Any deliverable contract end item is of a hazardous nature; or

(ii) It can reasonably be expected that hazards will be generated and controlled within the operational environment during the life of the contract and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded—

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; or

(2) When the contracting officer, with the concurrence of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

(c) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the clause at 1852.223–70. This clause may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(d) The contracting officer shall insert the clause at 1852.223–75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of $500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health. For other contracts, use of the clause is optional.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

13. In section 1842.503, revise paragraph (1)(iv) to read as follows:

1842.503 Postaward conferences.

(1) * * *

(iv) Complex contract management issues are expected, particularly risk management areas identified during program and acquisition planning, e.g., significant or unusual mission success, technical, cost, schedule, safety, security, occupational health, environmental protection, and export control risks.

* * * * *

PART 1846—QUALITY ASSURANCE

14. Add section 1846.000 to read as follows:

1846.000 Scope of part.

The Government has a duty to assure that appropriated funds are spent wisely. That duty is fulfilled in part through surveillance. Surveillance may be conducted through ''insight'' (*i.e.*, monitoring of selected metrics and/or milestones) or ''oversight'' (i.e., Government review and concurrence with contractor decisions). The decision to use insight or oversight is based on an assessment of the risk inherent in the activity being surveilled. Surveillance must be conducted whether or not the contract effort has been structured as performance-based.

15. Add section 1846.401 to read as follows:

1846.401 General. (NASA supplements paragraph (a))

(a) The quality assurance surveillance plan (QASP) which the project office prepares in conjunction with the statement of work is preliminary. It reflects the Government's surveillance approach relative to the perceived programmatic risk, and is written at a general rather than specific level because the risks will not be completely identified at that time. After contract award, contracting officers shall ensure that the QASP is revised to reflect the risks associated with the successful proposal. This final QASP shall not be included in the contract, but should be periodically reviewed to ensure its currency.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. The clause in section 1852.223–70 is revised to read as follows:

1852.223–70 Safety and Health.

* * * * *

Safety and Health (July 2000)

(a) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(b) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of $25,000 or more, or Close Call (a situation or occurrence with no injury, no damage, or only minor damage (less than $1,000) but possesses the potential to cause any category of mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(d) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(e)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (e)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(f) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (f) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that—

(1) Amount to $1,000,000 or more (unless the Contracting Officer makes a written determination, after consultation with installation safety and health representatives, that this is not required);

(2) Require construction, repair, or alteration in excess of $25,000; or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(g) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(h) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification standards for personnel involved in hazardous operations.

(End of clause)

17. In section 1852.223–73, remove Alternate I and revise the clause to read as follows:

1852.223–73 Safety and health plan.

* * * * *

Safety and Health Plan (July 2000)

The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPG 8715.3, NASA Safety Manual, Appendix H). The plan must include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of contractor employees and to ensure the safety of all working conditions throughout the performance of the contract. The plan must similarly address safety and occupational health for subcontractor employees for any proposed subcontract whose value is expected to exceed $500,000, including commercial services and services provided in support of a commercial item. Also, when applicable, the plan must address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of NASA employees and the public. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

18. Add section 1852.223–75 to read as follows:

1852.223–75 Major breach of safety or security.

As prescribed in 1823.7001(d), insert the following clause:

Major Breach of Safety or Security (July 2000)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the contractor that consists of an accident, incident, or exposure resulting in a fatality; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

[FR Doc. 00–14752 Filed 6–12–00; 8:45 am]

BILLING CODE 7501–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1811 and 1852

Packaging, Handling, and Transportation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to add guidance for packaging, handling, and transportation of certain kinds of aeronautical and space equipment. A NASA policy directive containing these policies already exists, and the new NFS material adds a contract clause which directs the contractor to perform packaging and handling as provided in the policy directive.

EFFECTIVE DATE: June 13, 2000.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), (202) 358–1279, email: jdolvin1@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Some NASA programs require the development of aeronautical and space equipment which, when transported from one place to another, require the use of special kinds of packaging, handling methods, and transportation procedures. At present, there is a NASA policy directive which has instructions for these procedures, but there is no contract clause in the NFS to require the contractor to perform packaging and handling as provided in the directive. This final rule adds such a clause to the NFS.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), because it only applies in those instances when a small business entity is providing either Class I , II, or III items.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public 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 1811 and 1852

Government Procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Acccordingly, 48 CFR Parts 1811 and 1852 is amended as follows:

1. The authority citation for 48 CFR Parts 1811 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1811—DESCRIBING AGENCY NEEDS

2. Amend paragraph (b) of section 1811.002 by removing the word ''shall'' and adding ''must'' in its place.

1811.002 [Amended]

3. Amend paragraph (a)(3) of section 1811.403 by removing the word ''shall'' and adding ''must'' in its place.

4. Add section 1811.403–70 to read as follows:

1811.403–70 Packaging, handling, and transportation.

(a) NPG 6000.1E, ''Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components'' provides guidance for shipment of certain NASA items.

(b) Contracting officers, with the advice of the requiring activity and the Center Transportation Officer, must include a designation of each deliverable item, or groupings of deliverable items, as Class I, II, III, or IV for purposes of contractor compliance with the NPG.

1811.404 [Amended]

5. Amend paragraphs (a)(2) and (a)(3) of section 1811.404 by removing the word ''shall'' and adding ''must'' in its place.

6. Add section 1811.404–70 to read as follows:

1811.404–70 NASA contract clauses.

The clause at 1852.211–70, Packaging, Handling, and Transportation, must be included in solicitations and contracts for deliverable items, including software, designated as Class I (mission essential), Class II (delicate or sensitive), or Class III (requires special handling or monitoring).

1811.502 [Amended]

7. Amend paragraph (d) of section 1811.502 by removing the word ''shall'' and adding ''must'' in its place.

1811.602 [Amended]

8. Amend paragraph (c) of section 1811.602 by removing the word ''shall'' and adding ''must'' in its place.

1811.603 [Amended]

9. Amend paragraph (e)(iii) of section 1811.603 by removing the word ''shall'' and adding ''must'' in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Add section 1852.211–70 to read as follows:

1852.211–70 Packaging, handling, and transportation.

As prescribed in 1811.404–70, insert the following clause:

Packaging, Handling, and Transportation—June 2000

(a) The Contractor shall shall comply with NPG 6000.1E, ''Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components'', dated April 26, 1999, as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

[FR Doc. 00–14753 Filed 6–12–00; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AF88

Importation or Shipment of Injurious Wildlife: Zebra Mussel (*Dreissena polymorpha*)

AGENCY: Fish and Wildlife Services, Interior.

ACTION: Final rule, correction.

SUMMARY: The U.S. Fish and Wildlife Service (we) corrects 50 CFR 16.13 by adding the zebra mussel (*Dreissena polymorpha*), a small bivalve mollusk native to Europe, to the list of injurious fish, mollusks, and crustaceans, which are subject to restrictions under the Lacey Act (18 U.S.C. 42). On November 7, 1991 (56 CFR 56942), we added the zebra mussel to the list of injurious wildlife, but it was inadvertently omitted in a subsequent amendment to 50 CFR Part 16 (58 FR 58979, Nov. 5, 1993). This rulemaking corrects the omission and continues the prohibition on the importation, acquisition, or transportation of live zebra mussels, veligers, or viable eggs thereof into or between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

DATES: This action is effective June 13, 2000.

ADDRESSES: Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Hannibal Bolton, Chief, Division of Fish and Wildlife Management Assistance, telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761) was passed by Congress on October 27, 1990, and signed by President Bush. Section 1208 of that law contains a provision that amends the Lacey Act (18 U.S.C. 42) by adding the zebra mussel to the list of injurious animals contained therein. This provision required addition of the zebra mussel to implementing regulations in 50 CFR 16.13. On November 7, 1991, we added zebra mussels to 50 CFR part 16 (56 FR 56942). In a subsequent final rule affecting part 16, we inadvertently omitted the zebra mussel.

Background

The regulations contained in 50 CFR part 16 implement the Lacey Act as amended. Under the terms of the law, the importation of certain named wildlife is prohibited, with exceptions. Additionally, the Secretary of the Interior is authorized to prescribe by regulations other nonindigenous wild animals, or viable eggs thereof, which are deemed to be injurious or potentially injurious to the health and welfare of human beings; to the interests of agriculture, Forestry, and horticulture; or to the welfare and survival of wildlife or wildlife resources of the United States. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 added the zebra mussel to the statutory list. We amended 50 CFR 16.13 to reflect the present list of prohibited wildlife. By adding the zebra mussel to the list of injurious fish, mollusks, and crustaceans in 18 U.S.C 42 and in 50 CFR 16.13, their acquisition, importation into, or transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purposes, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the District Director of Customs at the port of entry. In addition, no live zebra mussel, viable

eggs, or progeny thereof acquired under permit may be sold, donated, traded, loaned, or transferred to any other person unless such person has a permit issued by the director of the Service.

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, 50 CFR part 16 is amended as described below:

PART 16—INJURIOUS WILDLIFE

1. The authority citation for part 16 continues to read as follows:

Authority: 18 U.S.C. 42.

2. Section 1613(a)(2) is revised to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their progeny or eggs.

(a) * * *

(2) The importation, transportation, or acquisition of any live fish or viable eggs of the walking catfish, family Clariidae; live mitten crabs, genus *Eriochei,* or their viable eggs; and live mollusks, veligers, or viable eggs of zebra mussels, genus *Dreissena,* are proibited except as provided under the terms and conditions set forth in § 16.22.

* * * * *

Dated: May 5, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–14804 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 99122347–9347–01; I.D. 060600C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Temporary Closure for the Shore-based Whiting Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces a temporary closure of the primary season for Pacific whiting (whiting) south of 42° N. lat. at noon June 8, 2000, and reimposition of ''per trip'' limits for whiting until 0001 hours June 15, 2000, at which time the primary season south of 42° N. lat. will resume. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting at the 2000 allocation levels.

DATES: Effective from noon local time (l.t.) June 8, 2000, until 2400 hours June 14, 2000. Comments will be accepted through June 28, 2000.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6145 or Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a) (3) and (4) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery, and authorized separate starting dates for each sector's primary season. The primary season for the shore-based sector is the period(s) when the large-scale target fishery is conducted, and thus when ''per trip'' limits are not in effect. The regulations further divide the shore-based allocation so that no more than 5-percent of the shore-based allocation for whiting may be taken and retained south of 42° N. lat. before the primary season begins north of 42° N. lat. The primary season for the shore-based sector south of 42° N. lat. began on April 1, 2000, earlier than the northern season which begins on June 15, 2000, because whiting migrate from south to north during the fishing year. (The first large whiting landing south of 42° N. lat. occurred on April 20, 2000, although the fishery could have started on April 1, 1999.) The 5-percent cap is intended to discourage effort shifts to the south area early in the year. The shore-based whiting allocation for 2000 is 83,790 metric tons (mt) and the 5-percent cap on early fishing south of 42° N. lat. is 4,190 mt. When the 5-percent cap is reached, the 20,000-lb (9,072 kg) trip limit that was in place before the start of the southern primary season is reimposed and remains in effect until the start of the northern primary season on June 15, 2000. However, the 20,000-lb (9,072 kg) trip limit only applies if a vessel does not fish inside of 100 fm (183 m) in the Eureka area during the fishing trip. A different trip limit of 10,000-lb (4,536 kg) of whiting is in effect year-round (unless landings of whiting are prohibited) if a vessel fishes inside of 100 fm (183 m) at any time during a fishing trip in the Eureka area. This smaller limit is intended to minimize incidental catch of chinook salmon which are more likely to be caught shallower than 100 fm (183 m) in the Eureka area.

The best available information on June 5, 2000, indicates that 2,797 mt of whiting have been taken by the shore-based fishery south of 42° N. lat. through May 27, 2000, and that 4,190 mt are projected to be taken by noon June 8, 2000. Therefore, the 20,000-lb (9,072 kg) ''per trip'' limits announced in the 2000 annual management measures (65 FR 221, January 4, 2000) will resume until the primary season begins north of 42° N. lat.

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(i)(B) and (iii)(D), NMFS revises paragraph B. of Section IV. of the 2000 annual management measures (65 FR 221, as amended), by adding a new sub-paragraph B. (3)(b)(iv) as follows:

IV. NMFS Actions

B. * * *

(3) * * *

(b) * * *

(iv) *Closure of shore-based sector south of 42° N. lat.* Effective noon June 8, 2000, to 2400 hours (12 midnight) June 14, 2000 l.t., no more than 20,000-lb (9,072 kg) may be taken and retained, possessed or landed south of 42° N. lat. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43°–40° 30′ N. lat.), the 10,000-lb (4,536 kg) trip limit applies, as announced in the annual management measures at paragraph IV, B (3)(c)(ii).

* * * * *

Classification

This action is authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(i)(B) and (iii)(D), and is exempt from review under Executive Order 12866.

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

Dated: June 7, 2000.

Bruce Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14855 Filed 6–8–00; 2:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 114
Tuesday, June 13, 2000

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing amendments to its chartering and field of membership manual to update chartering policies and further streamline the select group application process. These proposed amendments result from NCUA's experience addressing field of membership issues and concerns that surfaced after the adoption of the current chartering and field of membership policies.

DATES: Comments must be postmarked or received by August 14, 2000.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-Mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, 4807 Spicewood Springs Road, Suite 5200, Austin, Texas 78759 or telephone (512) 231–7900; Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act (''CUMAA''). On August 31, 1998, the NCUA Board issued a proposed rule that revised and updated NCUA's chartering and field of membership policies. 62 FR 49164 (September 14, 1998). On December 17, 1998, the NCUA Board issued a final rule with an effective date of January 1, 1999. When the NCUA Board issued its final rule it instructed the Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1.

Shortly after the effective date of the rule, the American Bankers Association (American Bankers) sought a preliminary injunction from the United States District Court for the District of Columbia (the Court) against NCUA to enjoin the final rule. On March 10, 2000, the Court denied the American Bankers' motion. After the Court denied the American Bankers' motion for a preliminary injunction, the American Bankers along with the Independent Community Bankers of America (Community Bankers), filed an amended complaint consisting of seventeen counts. On March 30, 2000, the Court dismissed all of the challenges by the American Bankers and Community Bankers to IRPS 99–1.

Over the past eighteen months, NCUA's Field of Membership Taskforce has monitored and reviewed the implementation of IRPS 99–1 in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In response to this continued oversight, the Field of Membership Taskforce provided a report to the Board this year. The findings and recommendations are in response to issues that either arose during the past eighteen months or were identified by the NCUA Board as issues that needed clarification.

A. Proposed Amendments

1. Occupational Common Bond

Independent Contractors. Chapter 2, Section II.A of the Chartering Manual states:

> So that NCUA may monitor any potential field of membership overlaps, each group to be served (*e.g.*, employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter.

63 FR 73022 (December 30, 1998). It was the NCUA Board's intent that companies with a strong dependency relationship should be specifically named in the credit union's charter in order to monitor overlaps. However, in some cases, such as when the group possessing the dependency relationship is comprised of numerous sole proprietors or independent contractors, it would be burdensome to list each contractor, and any overlap would be immaterial. For example, there may be hundreds of independent drivers for any particular cab company. Therefore, the NCUA Board is proposing to amend the language in the section on occupational common bonds so that in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable.

2. Associational Common Bond

Students Groups. Under IRPS 99–1, students are considered occupational groups. This permits single occupational common bond credit unions to serve persons employed or attending the same school. However, it does not allow single associational charters, such as faith-based groups that operate schools, to include students in their charters. While a single common bond church credit union can serve the church's employees, including faculty and staff, it cannot serve the students unless the credit union changes its charter type to multiple common bond. This policy restriction is confusing and causes undue problems for some credit unions. To remedy this situation, the NCUA Board believes that student groups should be considered as either associational or occupational, depending on the circumstances.

Given the history of student groups, there is a basis and precedent for re-defining this common bond to allow greater flexibility. For example, over the years, student groups have been treated differently.

As early as 1967, students could be included in the field of membership of a federal credit union chartered primarily to serve faculty and other employees of a college or university. That policy re-stated the earlier position that it did not appear economically advisable to charter a credit union with

a field of membership limited to students.

In IRPS 89–1 as well as IRPS 94–1, it was determined that student groups could constitute a valid associational common bond and could qualify for a charter. In IRPS 99–1, however, students again became part of an occupational common bond. This change addressed the problem of adding students to occupational school based credit unions, but it created an unanticipated problem with associational based faith credit unions. For example, many churches sponsor and operate schools. The resulting issue with this change was whether students at church schools could be added without changing the common bond type of the credit union (faith based credit unions have an associational common bond).

There is no question that the students of church schools share a common bond with the church, but by policy, the students could not be added without going through the expansion procedures and changing the nature of the credit union. The NCUA Board does not believe this is desired or equitable. The NCUA Board believes that students are a unique group that can be considered either occupational or associational depending on the circumstances. That is, a student group, by itself or when combined with school employees, can be or constitute part of an occupational common bond. When part of a church group, the student group can be treated as part of an associational common bond. Therefore the NCUA Board is proposing to amend Chapter 2, Section III A.1. of IRPS 99–1 to reflect this view.

While not requiring a policy change, several other issues involving students have arisen in the last eighteen months that require clarification. NCUA, by policy, will not consider a student group below the elementary level, in and of itself, as constituting a valid group (employees and students of an elementary school would still be a valid group). Additionally, students of martial arts, sports camps, and other similar social/recreational training programs do not constitute a valid associational group simply because they are enrolled in the program. It is the intent of IRPS 99–1 and these amendments that students must be tied to some academic endeavor or occupational based training program (*i.e.*, college, trade school). Finally, student associational groups must also provide evidence of a valid organization. This can be in the form of bylaws, charter or other equivalent documentation. It is important that the existence of a valid association be determined.

Tiered Voting. In determining whether a group qualifies as an associational group, one of the criteria NCUA considers is whether the members of the group have voting rights. While NCUA will evaluate the totality of circumstances in reaching its decision, a member's ability to vote is a significant factor, especially when differentiating between bona fide associations and client-customer relationships.

Questions have arisen whether this criterion requires each member of the group to vote directly for an official of the association. NCUA has found that some large associations have adopted voting procedures where members vote for delegates who, in turn, cast their votes for officials. This voting structure constructively meets the intent of the field of membership policy. Examples of this may include churches where the lay persons elect delegates who attend the regional or national meetings to elect the national officers and labor unions that may be similarly structured. Therefore, where such voting structures exist, the association will be considered to have met the voting requirement criterion.

Documentation Requirements

Generally, IRPS 99–1 requires that an association provide documentation that it is a valid association. In addressing this issue in IRPS 99–1, language was included that indicated that the best method to demonstrate an organization was a valid association was through a charter or bylaws, or other equivalent documentation. The NCUA Board has found that in some cases, particularly at the local level, some faith based associations may not possess bylaws or a charter. In those cases, it is not necessary to have a copy of a charter or bylaws, but it is necessary to be able to document in some way, *i.e.*, other equivalent documentation, that it is a valid association. For example, a church may not have bylaws or a charter, but it should be able to obtain some other documentation demonstrating it is a legally constituted church. Often, this can come from the presiding official of the church.

3. Multiple Common Bond Credit Unions

Expedited Process for Groups of 500 or Less

In the chartering process, as well as the addition of select groups to a multiple common bond credit union, economic advisability is critically important. NCUA has long taken the position that no charter should be granted unless a determination is made that the credit union ''will be viable and that it will provide needed services to its members,'' and will have a ''reasonable opportunity to succeed.'' To ignore these basic, yet very important, chartering requirements would create unnecessary and undue risks to the National Credit Union Share Insurance Fund (NCUSIF). Equally important is the fact that members of a credit union that has no reasonable chance of success are needlessly harmed. Therefore, it is the responsibility of NCUA to assure that if a credit union is chartered, it has, at a minimum, a reasonable opportunity to succeed in today's financial marketplace. This issue was thoroughly discussed in the preamble to IRPS 99–1.

The addition of groups to a multiple common bond credit union also takes into consideration economic advisability, as well as other criteria. CUMAA requires that before the addition of any group is approved, the NCUA Board must determine, in writing, that:

(1) The applicant credit union has not engaged in any material unsafe or unsound practices within the preceding 1-year period;

(2) The applicant credit union is adequately capitalized (this definition is legally different from the definition in Prompt Corrective Action);

(3) The applicant credit union has the administrative capability to serve the proposed membership;

(4) The benefit to the members outweighs any potential harm the expansion may have on another credit union; and

(5) The applicant credit union has met such additional requirements as the Board may prescribe.

An administrative process must be established to address these issues, particularly since the statute requires that the determination must be in writing.

The economic advisability of a group forming a separate credit union is also an essential element of consideration before a group can be added to a multiple common bond credit union. The statute clearly sets forth this standard. It states:

> [T]he Board shall—(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union. * * *

12 U.S.C.1759 (f)(1)(A). Consequently, NCUA must determine in writing not only that the five statutory criteria are

met, but it must also make the determination that the group is not economically advisable for the group to form a separate credit union. The burden, as it should be, is on NCUA to make this determination. This assessment is essentially the same assessment that NCUA would make if the group requested a separate charter, *i.e.,* does it have a reasonable chance of survival? That is, regardless of the size of the group, NCUA must determine if the group could stand on its own as a separate credit union. If the group could safely form its own credit union, then the statute requires that the group be encouraged to form its own credit union.

As set forth in the preamble to IRPS 99–1, it remains the intent of the Board that every group being added to a multiple common bond credit union should be analyzed to determine whether it has the capability and desire to support an independent operation. This requirement, however, must be balanced with operational feasibility. To overlook the complexities of providing financial services will only lead to future supervisory problems. The regulatory approach, therefore, should consider known economic factors and the likelihood of success in establishing and managing a new credit union in today's marketplace. To restate what was discussed in IRPS 99–1, it is the intent that a group desiring a separate charter should have every reasonable opportunity to form a new credit union, but this desire must be balanced against known economic hurdles and start-up operational requirements. Similarly, a larger group lacking the interest to charter and operate a separate credit union should be closely analyzed since desire and initiative are critical to its overall success.

In addressing these requirements in relation to the historical data related to chartering new credit unions, the NCUA Board established an expedited process in IRPS 99–1 for groups of 200 or less primary potential members. Although a written determination regarding the various statutory criteria is still required, the expedited process allowed for the streamlined processing of groups of 200 or less since the Board found that a group of 200 or less, in almost all cases, would not be economically advisable. Thus, this past year, applicant credit unions applying to add a group of 200 or less simply had to complete the Form 4015–EZ. Additionally, no overlap analysis was required for these small groups.

A review of the empirical data of the last eighteen months has convinced the NCUA Board that the expedited processing number should be raised. The data indicates that a substantial majority of the multiple group expansions approved, 91.3 percent, were groups of 200 or less. Further, 96.7 percent of the approved expansions constituted groups of 500 or less. Overall, only 2 percent of all applications for multiple group expansions were denied. In every case involving a group of 500 or less, NCUA found that the group could not reasonably establish an economically viable stand-alone credit union. In fact, the smallest federal credit union chartered in 1999 had a primary potential membership of 2,000. The smallest state credit union chartered in 1999 had a primary potential membership of 1,651.

The NCUA Board believes that based on the historical experience of 1999 and early 2000, plus other chartering data since 1990, that the expedited processing number for adding groups should be raised to 500. [1] In conjunction with this proposal, the NCUA Board is also proposing that the overlap analysis required of groups of 200 or more should be raised to 500.

Adequate Capitalization for Multiple Common Bond Credit Union Expansions

In the preamble to the proposed rule and the preamble to IRPS 99–1 the NCUA Board addressed the issue of defining the statutory term ''adequate capitalization'' for the addition of select groups to multiple common bond credit unions. It was noted in the more extended discussion in the preamble to the final rule that a reason for the policy change in 1982 allowing select group expansions was to assist credit unions in diversifying their fields of membership for safety and soundness reasons. Since that rationale is also applicable today, the NCUA Board specifically included in the final rule for single common bond and community credit unions the possibility that an expansion could be approved notwithstanding the credit union's financial or operational problems. One of the statutory requirements for the addition of select groups for a multiple common bond credit union, however, is that the credit union be adequately capitalized. However, adequate capitalization was not defined by the statute. Consequently, the Board provided its rationale in the preamble to IRPS 99–1 why 6 percent capitalization for a credit union in existence more than 10 years should be considered adequate for field of membership purposes. In particular, the Board stated:

> [A] 6 percent capitalization for field of membership expansions for multiple common bond credit unions chartered more than 10 years is reasonable and establishes a standard that, while not meeting the average capitalization level of federal credit unions, is indicative of a credit union that generally is managed in a safe and sound manner.

63 FR 72009 (December 30, 1998). In addition to the exception for credit unions chartered less than 10 years, low-income credit unions were also provided flexibility in meeting the capitalization requirement. Low-income credit unions or credit unions chartered less than ten years will be considered adequately capitalized for field of membership purposes provided they are making reasonable progress toward meeting the 6 percent net worth requirement.

In further addressing this issue, the Board stated that:

> [A] restoration capitalization plan, which was a basis for the 1982 policy and which remains operationally desirable, is not consistent with the statutory requirement in CUMAA that, before an expansion can be granted, the credit union must be adequately capitalized. A capitalization restoration plan, while operationally desirable, could essentially render the statutory requirement that the credit union be adequately capitalized meaningless. A ten-year window to obtain a capitalization level of 6 percent is reasonable, obtainable and consistent with prudent safety and soundness goals.

63 FR 72009 (December 30, 1998). The NCUA Board continues to support this view. That is, under normal circumstances, credit unions should be able to achieve a 6 percent capitalization level within 10 years. However, the NCUA Board also believes that for reasons totally outside the control of the credit union, such as sponsor problems, temporary asset fluctuations or economic downturns, a credit union may temporarily drop below or not be able to achieve or sustain a 6 percent capitalization level. These situations need to be addressed in view of the statutory adequate capitalization requirement. Since the addition of select groups is one way to reverse adverse economic trends, the NCUA Board believes that the exception provided newly chartered or low-income designated credit unions should also apply if the credit union is otherwise operationally sound and has the administrative capability to add and

[1] Since 1990, 5 credit unions with 500 or less primary potential members were chartered. Of those 5, 3 remain active. Since 1990, 11 credit unions with primary potential members of 501–1000 were chartered. Of those 11, 8 remain active. Of the 119 federal and state credit unions chartered since 1990, 16 had primary potential members of 1000 or less.

serve new groups effectively. Accordingly, the regional director should be given the latitude to make a determination that any credit union with less than 6 percent net worth is adequately capitalized for field of membership purposes if the credit union is making reasonable progress toward meeting the requirement. An element of consideration is whether the addition of a select group would facilitate improvement in the capitalization level. For example, if a reasonable plan is in place, and the addition of a select group would not adversely affect the credit union's capitalization goal, then the lower than 6 percent capital level should not be a reason for denying the addition of the group. Therefore, the NCUA Board is proposing to amend Chapter 2, Section IV.B.2 of the Chartering Manual to provide the regional director with this discretionary authority.

Reasonable Proximity for Select Group Expansions

In addressing the issue of reasonable proximity and the addition of a select group, the question was raised how NCUA would respond if a select group was located a considerable distance from the credit union, but no other credit unions are within closer proximity that could or are willing to serve the group. In this situation, the nonavailability of other credit unions is a factor that should be considered in determining whether the group is within reasonable proximity. This interpretation does not require a change in the chartering manual.

A second issue was also raised regarding the policies affecting the addition of groups that are within reasonable proximity of a service facility (this term includes a service center, branch or shared branch or any offsite credit union location that meets the definition of a service facility). This issue is particularly important in view of the networking system of state and national shared service centers, most of which technically meet NCUA's service facility definition. These shared service centers permit participation by credit unions without requiring, in many cases, an ownership interest. The identical or near identical nature of the shared service centers in the state and national networking system with the definition of a service facility in IRPS 99–1 has created confusion and, therefore, must be clarified.

Although IRPS 99–1 states that a credit union can expand around a shared service facility, it was never the intent that a credit union that was simply part of a service center networking system should be permitted to add groups around any of the numerous shared service center locations without an ownership interest. Consequently, the current policy guidance has been that expansions around shared service facilities would not be permitted unless the shared service facility was locally owned by a credit union. The rationale for this position is statutory.

CUMAA requires that NCUA shall first encourage the formation of separately chartered credit unions. If the formation of a separate credit union is not practicable or consistent with the standards set forth in the statute, then a select group can be included in the ''field of membership of a credit union that is within reasonable proximity to the location of the group.'' 12 USC 1759 (f)(1)(B). The statute then delineates a number of approval criteria that must be satisfied before a select group can be added.

In defining reasonable proximity, the Board stated that the group to be added must be within the ''service area'' of a ''service facility'' of the credit union. Service facility was defined to mean a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

While not entirely clear in the preamble to IRPS 99–1 or in the policy itself, it was the Board's intent that expansions would be limited to select groups that were within reasonable proximity to a credit union, as it was ultimately defined.

The state and national networking service center system, if used to allow the addition of groups, generally would not conform to the statutory requirements. For example, a credit union in Texas could add groups within reasonable proximity to a service center in Georgia or the hundreds of other service centers located in the United States, even though there was no ownership interest in the service centers, by virtue of its membership or participation in the service center network.

The issue is, can credit unions that are linked to service centers through a state or national network use that linkage, without ownership, to expand their fields of membership by adding select groups located within the service area of those service centers? It is the Board's belief that to allow a credit union to expand around any service center not local to or not having an ownership interest by that credit union would be inconsistent with the statute. However, it is the Board's view that the current policy is overly restrictive and that the threshold for allowing the addition of groups around a shared service facility should be modified.

The Board is amending Chapter 2, Section 4.A.1 of the Chartering Manual to permit the addition of groups around shared service facilities if the credit union either (1) owns directly or through a CUSO or similar organization, at least a 5 percent interest in the service facility or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

Multiple Common Bond Documentation Requirements

During 1999, there were a number of questions and issues related to the documentation requirements that must be satisfied to add select groups. The most questioned requirement related to what information the groups needed to provide relative to why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. While this information is found on Form 4015, IRPS 99–1 did not specifically delineate that the letter from the group must include information on its ability to form a separate credit union. To clarify this issue, the NCUA Board is proposing additional clarifying language be added to Chapter II, IV.B.3 as follows:

Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. Some of the areas the credit union may consider include:

- Member location—whether the membership is widely dispersed or concentrated in a central location.
- Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.
- Market competition—the availability of other financial services.
- Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.
- Sponsor subsidies—the availability of operating subsidies.
- Employee interest—the extent of the employees' interest in obtaining a credit union charter.
- Evidence of past failure—whether the group previously had its own credit

union or previously filed for a credit union charter.

• Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

A credit union need not address every item on this list, simply those issues that are relevant to its particular request. As stated in the proposed language, a credit union is responsible for obtaining from groups over 500 primary potential members information regarding the factors NCUA will evaluate to determine whether a group can form its own credit union. NCUA reserves the right to contact the groups directly to discuss economic advisability criteria. Direct contact often expedites the process.

Voluntary Mergers

Consistent with current policy, two single common bond credit unions that share the same common bond (same field of membership) can voluntarily merge. For example, corporation A is nationally based. As a result of being nationally based, it has several credit unions that are not geographically restricted serving its employees. These single common bond credit unions share the same common bond and field of membership. Accordingly, by policy, no analysis of the groups are required to determine if they can stand on their own and the credit unions can voluntarily merge.

Similarly, if corporation A is served by a single common bond credit union and corporation B is served by a single common bond credit union, the two single common bond credit unions can merge if one corporation is acquired by the other. In other words, if corporation A purchases corporation B, then the two single common bond credit unions share the same common bond and there is no restriction on the two credit unions voluntarily merging. Again, no analysis is required, other than to determine they share the same common bond.

The two situations described above have not presented a problem this past year. However, if in the examples provided above, one of the credit unions is a healthy multiple common bond credit union, the result can be entirely different. In some cases this places an undue burden on the credit unions and often presents potential long term supervisory concerns. For example, if in the second example the credit union serving corporation B is a multiple common bond credit union, and corporation A purchases corporation B, under current policy, if the primary field of membership in corporation B's credit union has more than 3,000 primary potential members and every other group is less than 3,000 primary potential members, then NCUA still must analyze each group of 3,000 or more potential members to determine whether the formation of a separate credit union is practical. This is a harsh result when both credit unions essentially share the same common bond.

The NCUA Board believes that if there is an intervening event, such as a corporate acquisition or restructuring, and the two credit unions have a substantial overlap of their fields of membership (in other words, the field of membership of both credit unions that results from the restructuring corporations), then the two credit unions should be allowed to voluntarily merge without analyzing that group's ability to form its own credit union.

Using the examples above, if corporation A, served by a single common bond credit union, purchases corporation B, served by a multiple common bond credit union, then employees of B can join credit union A if credit union A's field of membership already includes all employees of A. That is, corporation B employees are now corporation A employees and therefore are a part of credit union A's common bond. Further, even if credit union A were a multiple common bond credit union, policy would permit the addition of the employees of corporation B. It would be treated as an expansion, but processed as a housekeeping amendment. The only restriction is that credit union A cannot serve the other groups in credit union B without satisfying the select group expansion requirements. In many cases, the end result is almost a total overlap of the field of membership of both credit unions.

The almost total overlap is critical to this issue since, in reality, no new select groups that do not already have credit union service are being added. The criteria for multiple common bond expansions includes the statutory guidance that the NCUA Board must encourage the formation of separately chartered credit unions. This language assumes that the group does not already have credit union service available to it, and before adding the select group to another credit union, the agency must first encourage, if reasonable, a separate charter, and then make the determination whether the group can stand on its own as a separate entity. This analysis is relevant to new unaffiliated groups, not groups already included in the field of membership.

In addressing this issue, some credit unions decide to voluntarily merge since they essentially share the same field of membership. In other words, what was once two separate groups being served by two separate credit unions is now one group being served by two separate credit unions. In this situation, particularly if they apply to voluntarily merge, there is no interest in sustaining two credit unions. Consequently, merger is often the best alternative.

If the remaining groups are less than 3,000 primary potential members, they are incidental to the field of membership and should not be the basis for jeopardizing what otherwise is a sound business decision in the interests of the members and the NCUSIF.

Finally, in some instances, the acquiring corporation wants only one credit union serving its employees—not two. How does a healthy credit union dissolve? Obviously, it can voluntarily liquidate, but that is hardly the logical alternative. Allowing a merger in this situation is appropriate and supportable.

Therefore, in light of the reasons stated above, the NCUA Board is proposing a modification to its merger policy to permit the voluntary merger of credit unions with fields of membership that substantially overlap. That is, if the two credit unions share the same primary field of membership, and each of the remaining select groups have primary potential members less than 3,000, then the remaining groups will be considered incidental and the credit unions should be allowed to merge. However, non-primary groups greater than 3,000 would not be considered incidental.

Supervisory Mergers

When safety and soundness concerns are present, NCUA may approve the merger of any federally insured credit union. The NCUA Board is proposing to amend Chapter II, Section IV.D.2 of the Chartering Manual to clarify that abandonment by the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances are examples that may constitute grounds for merging a credit union due to supervisory concerns. This amendment is consistent with the guidance provided this past year in evaluating whether a merger was voluntary or supervisory.

Common Bond Charter Conversions

Chapter 2 Section IV.F of the Chartering Manual states that:

> Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

Although this section is rather straightforward it can have unintended consequences. This past year a multiple common bond credit union divested itself of its select groups so that it could expand its primary potential membership strictly in conformance with single common bond policies. Shortly after converting to a single common bond, the sponsor restructured and sold what had been a major part of the potential single common bond. While the credit union can continue to serve the members of record from this group, it cannot take in new members from the group without converting back to a multiple common bond. Present field of membership policy does not allow for this unless there are safety and soundness concerns.

As has been previously noted, corporate reorganizations and restructuring have increased dramatically this past year, and it is expected that the pace of last year will continue. This type of problem was not anticipated. The intent of the restrictive language in current policy is to prevent credit unions from circumventing the statute by dropping its select groups, becoming a single common bond credit union and adding other single common bond groups (a single common bond credit union can add groups within its common bond without regard to location or size), and then converting back by adding new groups or the groups it dropped when it became a single common bond credit union.

In the situation described above, circumstances beyond the credit union's control entirely altered the primary reason the credit union converted to a single common bond credit union. To eliminate this deleterious result from unexpected corporate reorganizations/restructuring, the NCUA Board is proposing to permit a credit union to continue to serve any group included in or added to its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion, even if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group, then it must convert back to a multiple common bond credit union on the third anniversary of the date of conversion. During this three-year period, it will continue to be treated as a single common bond credit union.

Conversions of Multiple Common Bond Credit Unions

The NCUA Board is proposing that Chapter IV, Section II. be amended to clarify that a state chartered multiple common bond credit union that converts to a federal charter may retain in its field of membership any group that it was serving at the time of conversion. Any subsequent additions or amendments to the field of membership must comply with federal field of membership policies. Additionally, the NCUA Board is clarifying that if any state chartered credit union that was considered under state law to be a single common bond credit union, but under federal rules would be classified a multiple common bond credit union, converts to a federal charter, the charter type must be changed to reflect federal policy.

The NCUA Board is also proposing an amendment to Chapter IV, Section III.A of the Chartering Manual to clarify that a federal credit union converting to state charter remains responsible for the operating fee for the year in which it converts. Currently, this fee is not pro rated.

4. Corporate Restructuring for Occupational Common Bond Credit Unions and Multiple Common Bond Credit Unions

This past year, the most challenging and complex field of membership issues involved the loss or dilution of a field of membership as a result of corporate reorganization or restructuring. This issue was addressed in IRPS 99–1, however, the current policy does not completely set forth the resolution of various, and sometime numerous, consequences of a corporate restructuring/reorganization, particularly when the credit unions involved are reluctant, and in some cases refuse, to mutually address the problem.

Corporate restructuring, under previous field of membership policies, could be more easily resolved since those policies allowed greater flexibility when a credit union added a new group, or continued service to a group that no longer was in its field of membership.

CUMAA, however, placed new restrictions on the addition of new groups relative to size and reasonable proximity. What was previously a relatively simple process became more problematic because of the requirement to determine if the change could be handled as a housekeeping amendment, or whether it required the credit union to apply for an expansion. If it was considered an expansion, then all the requirements relative to adding a new group applied. To illustrate this problem, consider the following example:

> Credit union A serves occupational group A and credit union B serves occupational group B. Occupational group A buys occupational group B. Can credit union A now serve occupational group B? What happens to credit union B? Can it continue to serve its old field of membership, or has it lost its field of membership and now must convert to another type of credit union or voluntarily liquidate or merge? If credit union B continues to operate, can it also serve occupational group A? What happens if in the acquisition both groups are totally integrated and they are no longer separately identifiable? What happens if it is a merger and the credit unions cannot reasonably determine if the new field of membership can easily be divided?

Often, one of the credit unions is significantly smaller than the other. In this instance, should credit union A, if it is the smaller of the two, receive a field of membership windfall and credit union B be left without a viable field of membership. In other words, should either credit union A or B be advantaged or adversely impacted by a corporate restructuring/reorganization over which they have no control. Lastly, what happens if the new corporation chooses to only allow one credit union to serve its employees? What is NCUA's responsibility in trying to determine who should serve whom?

This example, while relatively simple factually, is occurring with greater frequency, and there are no simple answers. It is further complicated if one of the credit unions is a multiple common bond charter. In fact, experience has demonstrated that the variations on this example are endless. Most often, the corporate change results in a significant hardship for one of the credit unions. It is anticipated that the number of corporate reorganizations and acquisitions will continue to climb thus impacting a larger number of credit unions.

Current written policy is not clear on how to resolve these type of issues. Further, in the development of current policy, all the ramifications of the problems resulting from corporate restructuring and acquisitions were not fully considered. Consequently, after considerable review of this issue, the NCUA Board believes that the current policy must be clarified in order to provide credit unions affected by this

common occurrence, and over which they have no control, more equitable treatment. The NCUA Board does not believe that Congress intended that credit unions should be forced to liquidate because of a corporate reorganization/restructuring. Consequently, the NCUA Board is of the view that in a corporate restructuring situation, greater flexibility must be allowed so that both credit unions can serve the same field of membership.

For single common bond credit unions, the NCUA Board is proposing an amendment to clarify actual practice that if the group comprising the single common bond of a credit union merges with, or is acquired by, another group, the credit unions originally serving both groups can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment. In other words, it will be permissible for both credit unions to serve the same single common bond group. However, the credit unions may agree to divide the field of membership in some way. To clarify this practice, additional language is proposed to state that unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

For multiple common bond credit unions, the NCUA Board is proposing a clarifying amendment to reflect that when two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions by a housekeeping amendment to its charter. As with single common bond credit unions, both credit unions will be allowed to serve the new group resulting from the merger, buyout or acquisition, and the credit unions can mutually divide the new field of membership. If they do not agree to a division of the field of membership, then a total overlap will be permitted. The NCUA Board believes this to be in the best interests of the credit unions and the members and the safety and soundness concerns that evolve when a credit union loses its field of membership.

Finally, it is important to note that the NCUA Board does not believe this policy clarification is in violation of CUMAA or its intent since new unaffiliated groups are not being added. Rather, the same potential membership, in terms of numbers, have the ability to choose to join one or both credit unions.

These changes do no alter the current policy that a multiple common bond credit union can, by a housekeeping amendment, continue to maintain in its field of membership groups that have been sold, spun-off, or merged.

5. Commmunity Charters

Chapter 2, Section V.A.2 of the Chartering Manual states that an ''ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements.'' Chapter 2, Section V.A.2 of the Chartering Manual further states that:

> In most cases, the ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.,* a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.,* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these this criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

The NCUA Board included this statement in the final rule to define those situations based on historical data that generally meet the community requirements. As a consequence of the historical data, which is further supported by NCUA's experience in 1999 for presumptive community charters, NCUA only requires a letter describing how the particular area meets the standards for community interaction or common interests. This was not intended to suggest that geographical areas with populations larger than 300,000, for example, would not qualify for a community charter. There is no negative presumption for larger geographical areas. Simply, more detailed documentation will be necessary to support that the proposed area is a well-defined community. In fact, the NCUA Board has approved six community charters with a population in excess of 300,000 under IRPS 99–1.

Community Action Plan (CAP)

Currently, credit unions are required to submit both a business and marketing plan with any proposed, converting or expanding community charter application. A business and marketing plan is also critical in evaluating the application for a newly chartered community credit union. It is anticipated that the marketing plan for either an expansion, conversion or chartering of a community charter will address how the credit union intends to serve the entire community.

However, very often, this aspect of the marketing plan may be very general and not specific to low-income or underserved areas.

The development of the marketing plan is solely within the purview of the credit union and is important in that it provides the strategy to achieve the objectives set forth in the business plan. NCUA has not previously required that the marketing plan be specific as to any one issue, but IRPS 99–1 does require that it address how the entire community will be served.

One of the goals of the Federal Credit Union Act is to make credit available to people of small means. Therefore, the NCUA Board is proposing that the chartering manual be revised to require that any type of application related to expanding, converting or chartering a community credit union include not only the required business and marketing plan, but also a community action plan (CAP) that will be periodically updated by the board of directors of the credit union and reviewed periodically by NCUA. There is no evidence to support that community credit unions have failed to fulfill their responsibility to serve the entire community. However, since service to the entire community is an essential consideration for community charters, it is appropriate that NCUA set forth its regulatory expectations in this regard. Existing community credit unions will also be expected to review their business and marketing plans and develop a CAP, which if approved in a final rule, should be in place no later than December 31, 2001.

The business plan would continue to address the documentation requirements set forth in Chapter 1 of the Chartering and Field of Membership Manual; however, the CAP would supplement the marketing plan by specifically addressing the credit union's plan to market its services to the entire community, including underserved or low-income areas (if applicable). This may include current or future delivery systems, such as ATMs, 24 hour voice response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations. An important component of CAP is that it will specifically focus on providing services to the entire community consistent with sound business principles, and in

particular less advantaged economic groups or groups with historically less access to financial services within its community field of membership.

Internal guidelines to examiners would require them to periodically review a community credit union's CAP and its overall effectiveness in meeting the goals outlined in the plan. In the event a community credit union failed to reasonably follow its CAP, the regional director would have discretion to pursue appropriate supervisory actions.

6. Underserved Areas

The addition of underserved areas, as defined in Chapter 3 of IRPS 99–1, to the field of memberships of operating credit unions has been identified as a priority by the Board. Additionally, some credit unions have pointed out that the requirements for adding an underserved area are difficult to document. Consequently, the Board believes that the current policies on adding underserved areas should be modified in order to more easily achieve the statutory intent of providing service to the greatest number of people of small means.

Three criteria must be met before an underserved area can be added to any federal credit union's field of membership. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703 (16)) and meet any additional requirements the Board may impose (the Board has not imposed any additional requirements). Third, the credit union adding the underserved area must establish and maintain an office or facility in the local community, neighborhood, or rural district.

After reviewing the statutory intent of service to underserved areas and the overall goal of improving credit union service to these areas, the NCUA Board proposes to modify the current polices relating to each of the three criteria in order to encourage further development of credit union activities in underserved areas and thereby improve financial services to those most in need.

IRPS 99–1 articulates a presumption policy for communities within a single political jurisdiction if the population does not exceed 300,000, or, if within multiple contiguous political jurisdictions, the population does not exceed 200,000. Under IRPS 99–1, however, interaction or common interests still must be demonstrated. The NCUA Board believes an impediment to facilitating service to underserved areas is the current policy requiring the applicant credit union to establish that there is interaction or common interests in the underserved area.

In previous policies, the NCUA Board has determined that an area where a majority of residents meeting NCUA's definition of low-income could in and of itself be the basis for a common bond. Similarly, the NCUA Board believes that in certain cases, if an area otherwise meets the requirements of an underserved area, then additional documentation will not be necessary to establish that it is a local community where the residents have common interests or interact.

Accordingly, if the area meets the requirements for an investment area, and the size of the investment area, whether contained wholly or in part of a single political jurisdiction or multiple political jurisdictions, meets the presumptive criteria established in IRPS 99–1, then the credit union will not have to demonstrate common interests or interaction among the residents. Accordingly, Chapter III, Section III, should be amended to state that the ''well-defined local community, neighborhood, or rural district'' requirement will be met if:

(1) The underserved area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or

(2) The underserved area to be served is in multiple contiguous political jurisdictions, *i.e.,* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000.

However, should the underserved area exceed these limits, the credit union must document the area meets the local community criteria outlined in Chapter 2, Section V.A.2, Documentation Requirements of IRPS 99–1.

The statute further requires that the local community, neighborhood, or rural district must be an investment area that is underserved. The Community Development Banking and Financial Institutions Act of 1994 delineates seven criteria, any one of which is sufficient to establish an area as an investment area. In six of those criteria, there is the requirement that there must be ''significant unmet needs for loans or equity investments.'' The Board has the authority to determine what constitutes significant unmet needs for loans or equity investments. In this instance, if the proposed area meets the poverty, median family income, unemployment, distressed housing, or population loss criteria as set forth in the Community Development Banking and Financial Institutions Act of 1994, then the Board will presume that there are significant unmet needs for loans or equity investments.

Finally, the third potential problem area in providing service to an underserved area is the statutory requirement that the ''credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available.'' NCUA has determined that this statutory test will be met if one of two requirements is met.

First, at the time the underserved area is added to the credit union's field of membership, a plan must be in place to establish and maintain an office or facility within two years. In addition to a permanent office or facility, this requirement may also be satisfied through periodic service to the underserved area through the use of a mobile office, an office open at select times each week, a service facility or shared branches or shared service facilities. A credit union that has multiple underserved areas in its field of membership must meet the statutory requirement for each underserved area unless the underserved areas are contiguous.

Second, if a credit union has a preexisting office within close proximity to the underserved area(s), then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

In addition to the amendments discussed above, the Board desires to provide incentives to further encourage the addition of underserved areas. In this regard, the NCUA Board is considering one or more incentives for credit unions adding underserved communities if the underserved community is a minimum population size. Comments are specifically requested on what the population size of the underserved area should be in order for the credit union to qualify for one or more of the following incentives:

- The asset base used to compute the credit union's operating fee will be frozen for a two-year period.

• The operating fee will be reduced by ten percent or more per year until the total reduction equals $20,000 over a maximum five-year period.

• The assets of the underserved area will not be included in the calculation of the credit union's operating fee for 5 years.

• Fixed assets in the underserved area will not be counted toward the fixed asset limitation of § 701.35 of NCUA's Rules and Regulations. In addition, the credit union would be exempt from the charitable donation regulation, § 701.25 and would be allowed to increase the dollar threshold from $100,000 to $250,000 when an appraisal is required, § 722.3(a)(1).

It is the Board's intent that the final amendments include some form of incentives. The NCUA Board is requesting comments on these proposed incentives and any others that would increase service to underserved areas.

7. Miscellaneous Issues

Single Common Bond Status

There has been a lingering question relative to the status of single common bond credit unions as of the date of enactment of CUMAA if the corporate sponsor subsequently reorganizes/restructures. For example, if corporation A is served by a single common bond credit union as of the date of enactment of CUMAA, but subsequent to the date of enactment corporation A restructures and spins off a division, can the single common bond credit union continue to serve the spun off division (no longer a part of corporation A) without converting to a multiple common bond credit union?

The position consistently followed by NCUA was that the credit union would have to convert to a multiple common bond credit union in order to continue to serve the spun off group. This was consistent with the statute because members of the group could still be served, even though they may not have been members of the credit union at the time of CUMAA's enactment.

This position has created unnecessary hardships for several credit unions. As a result, the NCUA Board has revisited this issue and believes that the previous position should be modified. The rationale for this modification is two-fold. First, the statute states:

> (ii) a member of any group whose members constituted a portion of the membership of any Federal credit union as of that date of enactment shall continue to be eligible to become a member of that credit union, by virtue of membership in that group, after that date of enactment.

12 U.S.C 1759(c)(1)(A)(ii). Clearly, the credit union can continue to serve any member of the group that was part of the field of membership as of the date of enactment. Second, the successor language in CUMAA states:

> If the common bond of any group referred to in subparagraph (A) is defined by any particular organization or business entity, subparagraph (A) shall continue to apply with respect to any successor to the organization or entity.

12 U.S.C. 1759(c)(1)(B). In other words, if the group was included in the field of membership of a credit union, that group can remain in the field of membership regardless of a change in that group's corporate status. For example, name change, move to a different location, acquisition of new subsidiaries, *etc.*

The above statutory provisions make it clear that groups within a credit union's field of membership as of the date of enactment can continue to be served. The only question is, must the status of the credit union change in light of the statutory definition of the types of credit unions? Upon further review, the NCUA Board is modifying its position on this issue since no new non single common bond groups are being added. Therefore, the NCUA Board is classifying any credit union that was a single common bond credit union as of the date of enactment of the statute as a single common bond credit union provided it does not add any new groups to its field of membership after the date of enactment. That is, to remain a single common bond credit union, it can only serve those groups that constituted part of the single common bond at the time CUMAA was enacted.

Low-Income Communities Added Under IRPS 94–1

IRPS 94–1 permitted any credit union to include in its field of membership, without regard to location, communities and associational groups satisfying the low-income definition.[2] The purpose of this policy was to facilitate the making of credit union service available to persons in low-income communities. The only other requirement for the addition of a low-income community was that the area so designated in fact met community standards. Although the courts did not address this particular issue or overturn any polices related to service to low-income communities, CUMAA affirmatively provided authority for federal credit unions to add any person within a local community, neighborhood, or rural district if the local community, neighborhood or rural district is (1) an investment area that is underserved and (2) the credit union establishes and maintains an office or facility in the designated investment or underserved area. 12 U.S.C. 1759(c)(2).

There are seven tests for an underserved investment area, any one of which will satisfy the requirement. The authority granted in CUMAA for federal credit unions is a broader standard than the low-income requirement definition in IRPS 94–1 in that it encompasses a significantly larger low-income base. One of the tests for an underserved investment area is that the ''median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income; and the area has significant unmet needs for loans or equity investments.'' [3] In many instances, this one test can be less stringent than the previous requirement under IRPS 94–1.

As has been repeatedly noted and even referenced in CUMAA, credit unions have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. This is reflected in the statutory authority to serve underserved investment areas. Throughout IRPS 99–1, the Board took note of this statutory mandate and adopted policies that encourage and promote credit union services to low-income groups and communities. This continues to be the NCUA Board's approach.

This discussion is necessary in light of the fact IRPS 99–1 does not directly address the status of low-income communities added under IRPS 94–1 since that term was essentially subsumed in the definition of an underserved area in IRPS 99–1. In other words, if the low-income community added under IRPS 94–1 meets the definition of an underserved investment area, and the credit union maintains an office in the low-income community, then it meets the requirements of IRPS 99–1.

The problem that has arisen relates to the continued service to the low-income community added under IRPS 94–1, which is no longer recognized under IRPS 99–1, if the credit union converts to a different charter type. [4] Current policy is that the grandfather provision no longer applies once the charter type

[2] Majority of the residents fall at or below 80 percent of the median household income of the nation or who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics.

[3] Chartering and Field of Membership Manual, Chapter III, Section III.

[4] If the credit union does not convert its charter type, it can continue to serve the low-income community added under IRPS 94–1 pursuant to the grandfather provision in CUMAA.

is converted. However, this policy, as it relates to low-income communities and underserved investment areas, is overly restrictive in view of the broad mandate of the statute to provide credit union services to people of modest means.

Based on the authority provided by CUMAA, the ability to serve people of modest means was expanded, not restricted. As previously mentioned, any number of other criteria were provided to broaden the ''modest means'' base. The primary limiting factor was the establishment and maintenance of an office in the area to be served. The NCUA Board has determined that any low-income community added under IRPS 94–1 will qualify as an underserved investment area. If, however, the credit union does not maintain an office in the low-income community, before it can expand that portion of its field of membership, it must come into compliance with IRPS 99–1.

Express Chartering

For many groups, obtaining NCUA's approval for a federal credit union charter is a time-consuming process that generally takes many months, sometimes as long as two years. It has been NCUA's experience that organizers have encountered difficulties in developing comprehensive business plans, operating policies and reasonable financial projections. To help achieve the agency's goals of encouraging the formation of credit unions and to make quality credit union service available to all eligible persons, the chartering procedures were reviewed by staff to determine if the application process could be modified to:

(1) Expedite the chartering process, and

(2) Achieve the agency's goal, as set forth in the Strategic Plan, of facilitating the formation of new credit unions.

After review of the current policy and procedures (IRPS 99–1), and considering the overall fail/success ratio of new charters, [5] the NCUA Board has determined that the chartering process can be streamlined without creating any undue risks to the National Credit Union Share Insurance Fund provided reasonable safeguards are implemented. To accomplish this goal, Express Chartering Procedures (ECP) are being implemented. To implement ECP, it is not necessary to amend IRPS 99–1. As faster approval of charter applications will result from standardized policies and business plans, and documentation of member and sponsor support. While the level of service of a new charter will initially be limited under ECP, credit union officials can enhance business plans and policies to increase services as they gain experience operating the credit union. Furthermore, with the addition of Economic Development Specialists in each region, more direct assistance, in conjunction with other organizations, can be provided to newly chartered credit unions. This assistance should provide increased opportunities to expand credit unions services in newly chartered credit unions.

In order to charter a federal credit union, a group must possess:

(1) An appropriate common bond or be a well-defined local community, neighborhood, or rural district;

(2) The subscribers must be of good character and fit to represent the credit union; and

(3) The establishment of the credit union must be economically advisable.

Each of these legal requirements were examined by NCUA to determine where changes could be made to expedite the chartering process. The NCUA Board's analysis of each requirement is addressed below:

Common Bond/Community

The inability of the charter applicant to establish the existence of an acceptable common bond type or community often contributes to the length of time it takes to process a new charter application. This basic requirement in the chartering process is statutory and must be satisfied. For single and multiple common bond credit unions, the existence of an association or employer generally satisfies the field of membership requirement, and, therefore, is not problematic. Conversely, a community charter applicant is more likely to encounter delay in its effort to establish that the proposed geographic boundaries constitute a ''local community.'' With the implementation of IRPS 99–1, and its streamlined procedures for certain communities, it is believed that this particular problem has been adequately addressed; therefore, the NCUA Board is not making any changes to this requirement.

Fitness of Management and Officials

In order to determine management's fitness to serve, NCUA performs both background criminal and credit checks on the proposed credit union's prospective officials and subscribers. (12 U.S.C. 1790a and 12 CFR 701.14) It often takes up to two months before receiving the results of background criminal investigations. However, rarely is adverse information uncovered during this process. Furthermore, the regions can and will approve a charter subject to receipt of the background review information. If adverse information is uncovered, the officials are charged with finding a suitable replacement. If the charter has already been granted, it is not suspended or canceled.

In some cases, the applicant group will be required to replace one or more of the proposed officials because of adverse credit checks. This also can result in a processing delay, but, generally, the delay is not extended. Additionally, and most importantly, due to safety and soundness concerns, it is important that credit checks be performed.

Because of the importance of background checks and NCUA's overall statutory responsibility to ensure the fitness of officials, the NCUA Board is not making any changes to this requirement.

Economic Advisability

To determine whether a proposed credit union would be economically viable, the group must submit a detailed business plan, as outlined in IRPS 99–1. The plan must contain a number of elements, including evidence of member support, proposed policies, evidence of subsidies, and pro forma financial projections.

Most often, delays in chartering a new credit union result from deficiencies in the group's business plan. For example, projections may not be reasonable, or policies may be incomplete or unacceptable. For new subscribers this is a particularly burdensome process and often requires the assistance of consultants and/or NCUA staff. It is also the one area that procedural modifications can be made without undermining the overall goal of obtaining an acceptable business plan.

It is during the development of the business plan that many groups decide that they do not have the expertise to run a credit union. In other words, the development of a business plan acts as a check and balance for those who mistakenly believe that chartering and running a credit union is an easy task. This accounts for the low percentage of groups that actually complete the chartering process. Although this has some safety and soundness benefits, the NCUA Board believes that if procedures can be put in place that allow applicant groups to maintain their initial momentum, more credit unions will be chartered and the entire process of developing a meaningful business plan will be better understood and

[5] Between 1990–1999, 119 credit unions were chartered. Of those chartered, 95 remain active for an overall 80% active status.

appreciated. Accordingly, the NCUA Board believes that those requirements relating to the development of a business plan can be modified to allow for expeditious charter approval, but restrict services offered until the credit union completes a more thorough business plan. The more thorough business plan is now required before the charter can be approved.

Express Chartering Program

The NCUA Board has given the Office of Examination and Insurance the responsibility to implement ECP. The ECP procedures will utilize standardized forms, NCUA on-site assistance, and certain restrictions on the initial services that may be offered. The ECP will be reviewed on an annual basis, by the Office of Examination and Insurance, to determine whether it is achieving its intended purpose without creating additional risks to the National Credit Unions Share Insurance Fund.

The ECP will use, to the greatest extent possible, standardized forms to facilitate the issuance of a charter early during the chartering process. They include:

- Standard business plan for limited services;
- Standard member survey format—this will include all applicable data needed to analyze the group's initial financial projections (initial pledge, systematic savings, *etc.*);
- Standard policies (shares, lending, investments, *etc.*); and
- Standard forms for sponsor support, grants, and nonmember deposits (where applicable). Often, letters of support are inconclusive or the terms are unclear. Standard forms should help to eliminate this problem.

Initially, credit unions using ECP will only be able to offer regular shares and signature loans not exceeding predetermined amounts. This will enable the officials to familiarize themselves with basic credit union operations and cash management skills. The Letter of Understanding and Agreement (LUA) that always accompanies a new charter will include this restriction. An applicant credit union can elect not to use ECP.

Once a credit union demonstrates it can manage these limited responsibilities, the officials can submit a new credit union prepared business plan to expand services (*e.g.*, share drafts, credit cards, *etc.*). This further refinement of the business plan can be accomplished in stages with increased responsibilities and services offered commensurate with the approved business plan.

The advantage of the early ECP is that once the credit union is chartered, some services can be offered, and the officials will gain experience and knowledge in the operation of a credit union as they prepare a more detailed business plan. It is also believed that the importance of a business plan will be better appreciated if the officials are actually engaged in operating the credit union.

While NCUA's resources are limited, judicious use of NCUA staff to work with qualifying groups would be beneficial. The ECP will make use of the regional EDSs to guide the group through the application process. Once the group is chartered, the EDS and examiner will work with the credit union, as they do now.

Internet Expansion Requests

The NCUA Board has given the Field of Membership Taskforce the oversight responsibility for the development of an Internet select group expansion process. This process would allow credit unions to submit requests for occupational groups of 500 or less online with an expedited approval by NCUA. When these proposed amendments are finalized the Board will provide more details.

8. Technical Amendment on the Title of the Section Regarding Immediate Family Members

The Board is proposing to change the titles of Chapter 2, Section II.H, Chapter II, Section III.H. and Chapter II, Section IV. H. to ''Other Person's Eligible for Credit Union Membership.'' This proposed technical amendment is appropriate to accurately conform the title to the policy contained in that section.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the proposed community action plan requirements in IRPS 00–1 are covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

The proposed amendment would require community federal credit unions to develop a community action plan to serve their members, including low-income members and low-income areas. The NCUA Board estimates that it will take an average of two hours for a federal credit union to comply with this community action plan requirement. The NCUA Board also estimates that 625 credit unions will have to develop this plan so the cumulative total annual paperwork burden is estimated to be approximately 1250 hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements is necessary; (2) the accuracy of NCUA's estimate of the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements. Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. These proposed amendments make no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

C. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 6, 2000.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601-3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1. Copies may be obtained by contacting NCUA at the address found in 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99–1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. In IRPS 99–1, Chapter 2, Section II.A is revised to read as follows:

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond; or
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, III.A.1).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served will be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or the subsidiaries listed below;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (*e.g.*, employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter. However, in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable (*e.g.*, ''non-incorporated owner-operators who work regularly under contract to AJM Industries, Inc. in Glenville, New York'').

The corporate or other legal entity (*i.e.*, the employer) may also be included in the common bond—*e.g.*, ''ABC Corporation.'' The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of a single occupational common bond are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation); or
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);
- Employees of all colleges and universities in the State of Texas. (not a single occupational common bond); or
- Employees of Timbrook School District and Swanbrook School District, in Burns, Georgia. (not a single occupational common bond).

4. In IRPS 99–1, Chapter 2, Section III.A.1 is revised to read as follows:

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);

• Non-natural person members of the association;

• Employees of the association (for example, employees of the labor union or employees of the church); and

• The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and any other equivalent documentation. If the associational charter crosses NCUA regional boundaries, each of the affected regional directors must be consulted prior to NCUA action on the charter.

Qualifying associational groups must hold meetings open to all members, must sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership. Usually, this will be found in the association's charter and bylaws.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

• Whether members pay dues;

• Whether members participate in the furtherance of the goals of the association;

• Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;

• Whether the association maintains a membership list;

• The association's membership eligibility requirements; and

• The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter.

Student groups (*e.g.,* students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter (see Charter 2, II.A).

Homeowner associations, tenant groups, co-ops, consumer groups, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology ''Alumni of Jacksonville State University'' is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—*e.g.,* ''Sprocket Association''—and will be shown in the last clause of the field of membership.

5. In IRPS 99–1, Chapter 2, Section II.B.4 is revised to read as follows:

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational common bond;

—That the group wants to be added to the applicant federal credit union's field of membership;

—Whether the group presently has other credit union service available; and

—The number of persons currently included within the group to be added and their locations.

• If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section II.E of this Chapter.

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational common bond;

—That the group wants to be added to the applicant federal credit union's field of membership; and

—The number of persons currently included within the group to be added and their locations.

6. In IRPS 99–1, Chapter 2, Section III.B.4 is revised to read as follows:

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015), to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's associational common bond;

—That the group wants to be added to the applicant federal credit union's field of membership;

—Whether the group presently has other credit union service available; and

—The number of persons currently included within the group to be added and their locations.

• The most recent copy of the group's charter and bylaws or equivalent documentation.

• If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section III.E of this Chapter.

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added.

Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's associational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—The number of persons currently included within the group to be added and their locations; and

• The most recent copy of the group's charter and bylaws or equivalent documentation.

7. In IRPS 99–1, Chapter 2, Section IV.B.3 is revised to read as follows:

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—The group's occupational or associational common bond;
—That the group wants to be added to the federal credit union's field of membership;
—Whether the group presently has other credit union service available;
—The number of persons currently included within the group to be added and their locations;
—The group's proximity to credit union's nearest service facility, and
—Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards, and provide comments on as many of the following factors that are applicable:

• Member location—whether the membership is widely dispersed or concentrated in a central location.

• Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.

• Market competition—the availability of other financial services.

• Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.

• Sponsor subsidies—the availability of operating subsidies.

• Employee interest—the extent of the employees' interest in obtaining a credit union charter.

• Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.

• Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

• If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and

• The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational or associational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—The number of persons currently included within the group to be added and their locations; and
—The group's proximity to credit union's nearest service facility.

• The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

8. In IRPS 99–1, Chapter 2, Section II.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same occupational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the affected credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

• The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.*, the group of persons in question is so small as to have no material effect on the original credit union;

• The overlapped credit union does not object to the overlap; or

• There is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.

In reviewing the overlap, the regional director will consider:

• The nature of the issue;

• Efforts made to resolve the matter;

• Financial effect on the overlapped credit union;

• The desires of the group(s);

• Whether the original credit union fails to provide requested service;

• The desire of the sponsor organization; and

• The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single occupational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single occupational federal credit unions to overlap community charters without performing an overlap analysis.

9. In IRPS 99–1, Chapter 2, Section II.E.1 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of Lucky Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

10. In IRPS 99–1, Chapter 2, Section III.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same associational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

• The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.,* the group of persons in question is so small as to have no material effect on the original credit union;

• The overlapped credit union does not object to the overlap;

• There is limited participation by members of the group in the original credit union after the expiration of a reasonable period of time; or

• The field of membership is broadly stated, such as a national association.

In reviewing the overlap, the regional director will consider:

• The nature of the issue;

• Efforts made to resolve the matter;

• Financial effect on the overlapped credit union;

• The desires of the group(s);

• Whether the original credit union fails to provide requested service;

• The desire of the sponsor organization; and

• The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single associational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single associational federal credit unions to overlap community charters without performing an overlap analysis.

11. In IRPS 99–1, Chapter 2, Section III.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

12. In IRPS 99–1, Chapter 2, Section IV.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This can be accomplished through a housekeeping amendment.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of MHS Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

13. In IRPS 99–1, Chapter 2, Section IV.A.1 is revised to read as follows:

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service

area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch if the credit union either (1) owns directly or through a CUSO or similar organization at least a 5 percent interest in the service facility, or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include an ATM.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's ''paid from'' or ''supervised from'' location is within the service area.

14. In IRPS 99–1, Chapter 2, Section IV.B.2 is revised to read as follows:

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. All amendments to a multiple common bond credit union's field of membership must be approved by the regional director.

NCUA will approve groups to a credit union's field of membership, if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;
- The credit union is ''adequately capitalized.'' NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.
- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A more detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union; however, only groups over 500 must address why they cannot form their own credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

15. In IRPS 99–1, Chapter 2, Section IV.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members. An overlap analysis is not required for groups with 500 or less primary potential members.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in field of membership clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every select group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. This requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

16. In IRPS 99–1, Chapter 2, Section IV.D.1 is revised to read as follows:

a. All select groups in the merging credit union's field of membership have less than 3,000 primary potential members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or more select groups in the merging credit union's field of membership has 3,000 or more primary potential members.

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special

requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a single common bond credit union into a multiple common bond credit union.

A financially healthy single common bond credit union with a primary potential membership in excess of 3,000 primary potential members cannot merge into a multiple common bond credit union, absent supervisory reasons.

d. Merger approval.

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

17. In IRPS 99–1, Chapter 2, Section IV.D.2 is revised to read as follows:

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

18. In IRPS 99–1, Chapter 2, Section IV.F is revised to read as follows:

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. However, a credit union can continue to serve any group included in, or added to, its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group after three years from the date of conversion, then it must convert back to a multiple common bond credit union. During this three-year period, it will continue to be treated as a single common bond credit union.

Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

19. In IRPS 99–1, Chapter 2, Section II.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or if the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

20. In IRPS 99–1, Chapter 2, Section III.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

21. In IRPS 99–1, Chapter 2, Section IV.F is revised to read as follows:

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

22. In IRPS 99–1, Chapter 2, Section V.A.2 is revised to read as follows:

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether

the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being ''local.'' In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.,* a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, *etc.*);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, *etc.*); or
- Other documentation that demonstrates that the area is a community where individuals have common interests or interact.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

In addition, proposed and existing community credit unions must develop a community action plan (CAP). The CAP supplements the credit union's marketing plan by specifically addressing how the credit union plans to market its services to the entire community, including any underserved or low-income areas, if applicable. This may include current or future delivery systems, such as ATMs, 24 hour voice response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations.

Community credit unions boards will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and/or business plan submitted with their application. The boards of community credit unions will also be expected to periodically review and update the CAP to determine if all segments of the community are being served. If a credit union fails to make reasonable efforts to follow its community action plan, NCUA may initiate appropriate supervisory action.

23. In IRPS 99–1, Chapter 3, Section III is revised to read as follows:

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

The ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.,* a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.,* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria and meets the definition of an investment area that is underserved, then it is presumed to be a local community, neighborhood, or rural district.

An investment area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent;

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

24. In IRPS 99–1, Chapter 4, Section II is revised to read as follows:

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., chartering and reserve requirements; and
- Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record.

If the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Any subsequent additions or amendments to the credit union's field of membership must comply with federal field of membership policies.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

25. In IRPS 99–1, Chapter 4, Section III.A is revised to read as follows:

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

26. In IRPS 99–1, Chapter 2, the title of Sections II.H, III.H, and IV.F is revised to read as ''Other Person's Eligible for Credit Union Membership.''

27. In IRPS 99–1, Appendix D, Form 4015EZ is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015–EZ

Use Only for Expansions Covering Groups of 500 Persons or Less

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:
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2. Name and address of group:
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(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
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4. How many primary potential members (excluding immediate family and household members) are in the group: ☐☐☐☐☐☐☐☐
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5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

☐ How the group shares the occupational or associational common bond (for single common bond additions only);

☐ That the group wants to be added to the federal credit union's field of membership;

☐ The number of persons to be added and the group's location(s); and

☐ The group's proximity to the credit union's nearest service facility (for multiple common bond additions only).

Name and title of credit union board-authorized representative (*e.g.,* President/CEO):

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(Date)

28. In IRPS 99–1, Appendix D, Form 4015 is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015

Use Only for Expansions Covering Groups of More Than 500 Persons

For expansions covering groups of 500 or less persons—use the *short form application, NCUA 4015–EZ.*

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:
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2. Name and address of the group:
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(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's Chartering and Field of Membership Manual, Chapter 2:

☐ Section II.A for single occupational common bond groups;

☐ Section III.A for single associational common bond groups; or

☐ Section IV.A for multiple common bond fields of membership.

4. How many primary potential members (excluding immediate family and household members) are in the group: ☐☐☐☐☐☐☐

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility [6] to which the group has access (Reference Chapter 2, Section IV.A.1):

☐☐☐☐☐☐☐

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 2000–NM–96–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. 2000–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 and A300–600 series airplanes. The DGAC advises that maintenance personnel found a chafed harness (cable) in the outer wing fuel tank. The harness is routed to the surge tank high-level sensor. Investigation revealed that clipping and routing of the cable (wiring) coupled with excessive slack of the cable between the ''P'' clips allows the cable to chafe against the support canister for the magnetic level indicator. Such chafing, if not corrected, could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tank.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A300–28–0077 (for Model A300 series airplanes), and A300–28–6062 (for Model A300–600 series airplanes), each dated July 19, 1999. These service bulletins describe procedures for repetitive inspections to detect chafing and the existence of repairs of the harness of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. The follow-on corrective actions involve removing original repairs, if necessary, and accomplishing a splice repair and installing sleeves to the inner and outer cable coverings. The service bulletins categorize the repairs as either temporary or permanent depending upon the location of the repair and whether certain previous repairs were accomplished. In addition, the follow-on corrective actions include a repetitive visual inspection of the harness to ensure the integrity of the repair. This inspection would be performed if certain conditions (*e.g.,* any temporary repairs) exist.

The manufacturer also has issued Airbus Service Bulletins A300–28–0058, Revision 02 (for Model A300 series airplanes), and A300–28–6020, Revision 01 (for Model A300–600 series airplanes), each dated September 28, 1999. These service bulletins describe procedures for modification of the harness for the high-level sensor in the outer wing fuel tanks. The modification involves re-routing the cables and installing longer cleats and reversing the ''P'' clips that support the cables. This modification will prevent the cables from sagging and ensure adequate clearance between the cables and the support canisters of the magnetic level indicators. Accomplishment of the modification eliminates the need for certain repetitive inspections of the harness of the high-level sensor of the fuel surge tanks. However, the modification does not eliminate the need for the 10,000-flight-hour detailed visual inspections specified in the follow-on corrective actions, following the accomplishment of any temporary repairs.

The DGAC classified Airbus Service Bulletins A300–28–0077 and A300–28–6062 as mandatory and issued French airworthiness directive 1999–404–293(B), dated October 6, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to detect chafing and the existence of repairs of the wire harnesses of the high-level sensors; and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. This proposal also would require modification of the harness for the high-level sensor of the outer wing fuel tanks, which would terminate certain repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Difference Between Proposed AD and Related Service Information

Operators should note that this AD proposes to mandate, within 18 months, the modification of the harness of the high-level sensor of the outer wing fuel tanks described in Airbus Service Bulletin A300–28–0058, Revision 02, or A300–28–6020, as terminating action for certain repetitive inspections. [Incorporation of the terminating action is optional in French airworthiness directive 1999–404–293(B).]

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is consistent with these conditions.

Cost Impact

The FAA estimates that 37 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed repetitive detailed visual inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,220, or $60 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,220, 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 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 proposal would not have federalism implications under Executive Order 13132.

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:

Airbus Industrie: Docket 2000–NM–96–AD.

Applicability: Model A300 and A300–600 series airplanes, certificated in any category; except those airplanes on which Airbus Modification 04489 has been installed during production.

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 (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 of the wire harnesses of the high-level sensors, which could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tanks, accomplish the following:

Detailed Visual Inspection

(a) Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection to detect chafing and the existence of repairs of the harness (cable) of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; in accordance with Airbus Service Bulletin A300–28–0077 (for Model A300 series airplanes), or A300–28–6062 (for Model A300–600 series airplanes), each dated July 19, 1999, as applicable.

(1) For airplanes on which modification of the harness in accordance the Airbus Service Bulletin A300–28–0058 (for Model A300 series airplanes), or A300–28–6020 (for Model A300–600 series airplanes), as applicable; has NOT been accomplished: Accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Repeat the detailed visual inspection thereafter at intervals not to exceed 500 flight hours until the requirements of paragraph (a)(1)(ii) of this AD are accomplished. If any wire chafing, chafe mark, or existing repair is detected during any inspection, prior to further flight, determine the appropriate repair and/or condition of repair as specified in Inspection Table 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–28–0077 or A300–28–6062, as applicable. At the times specified in Inspection Table I, accomplish corrective actions (*e.g.,* temporary or permanent repairs and follow-on inspections and repairs), in accordance with the applicable service bulletin. If any discrepancy is found during any follow-on inspection, prior to further flight, repair the discrepancy in accordance with the applicable service bulletin.

(ii) Within 18 months after the effective date of this AD, modify the harness of the high-level sensor in the outer wing fuel tanks, in accordance with Airbus Service Bulletin A300–28–0058, Revision 02 (for Model A300 series airplanes), or A300–28–6020, Revision 01 (for Model A300–600 series airplanes); each dated September 28, 1999. Accomplishment of the modification terminates the 500-flight-hour repetitive inspection required by paragraph (a)(1) of this AD. However, if a temporary repair is installed, the 10,000-flight-hour detailed visual inspection specified in the follow-on corrective actions of Table 1 continues to be required by this AD.

(2) For airplanes on which modification of the harness in accordance with Airbus Service Bulletin A300–28–0058 (for Model A300 series airplanes), or A300–28–6020 (for Model A300–600 series airplanes); as applicable; HAS been accomplished: Accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii), as applicable.

(i) If no wire chafing, chafe marks, or existing repairs are detected, no further action is required by this AD.

(ii) If any wire chafing, chafe mark, or existing repair is detected, prior to further flight, determine the appropriate repair and/or condition of repair as specified in Inspection Table 2 of the Accomplishment Instructions of Airbus Service Bulletin A300–28–0077 or A300–28–6062, as applicable. At the times specified in Inspection Table 2, accomplish corrective actions (*e.g.*, temporary or permanent repairs and follow-on inspections), in accordance with the applicable service bulletin. If any discrepancy is found during any follow-on inspection, prior to further flight, repair the discrepancy in accordance with the applicable service bulletin.

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 mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: Modification accomplished prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300–28–0058, dated December 15, 1988, Revision 01, dated October 1, 1991 (for Model A300 series airplanes), or A300–28–6020, dated December 15, 1988 (for Model A300–600 series airplanes), is considered acceptable for compliance with the action specified in paragraph (a)(1)(ii) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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

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

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–404–293(B), dated October 6, 1999.

Issued in Renton, Washington, on June 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14884 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–354–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, that would have superseded an existing AD. That AD currently requires various inspections of fluorescent lamps and lampholders in the cabin area for discrepancies; corrections, if necessary; and reinspection of the lamps to ensure correct installation after replacement or reinstallation of the lamps or lampholders. The proposed AD would have added a requirement for replacement of the electronic light ballasts with improved ballasts, which would terminate the reinspections, and would have expanded the applicability of the existing AD. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule to require a certain modification in accordance with revised procedures. The actions specified by this new proposed AD are intended to prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area.

DATES: Comments must be received by July 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–354–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. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 99–NM–354–AD'' in the subject line and need not be submitted in triplicate.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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–354–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–354–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 27, 2000 (65 FR 16154). That NPRM proposed to supersede AD 97–13–06, amendment 39–10052 (62 FR 33545, June 20, 1997), which is applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes. That NPRM would have continued to require the actions specified in AD 97–13–06. That NPRM would have added a requirement for replacement of the electronic light ballasts with improved ballasts, which would terminate the requirement for reinspections of the lamps. That NPRM would also have expanded the applicability of the existing AD to include additional Model SAAB 340B and SAAB 2000 series airplanes that are also subject to the identified unsafe condition. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority, advising that a terminating modification is available, and that additional airplanes may be subject to fluorescent lampholder charring due to the incorrect installation of the lamps in their holders. That condition, if not corrected, could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has been advised that Saab has issued Service Bulletin 340–33–049, Revision 01, dated November 15, 1999, and Revision 02, dated February 2, 2000. The original issue of this service

bulletin, dated January 21, 1999, was referenced as an appropriate source of service information in paragraph (d)(1) of the proposed AD, and describes procedures for modification of the ballasts to ensure sufficient clearance between the ballast and Passenger Service Unit (PSU) transistors. Revision 01 and Revision 02 of the service bulletin describe similar modification procedures, but include additional procedures for replacement of certain PSU circuit boards with different PSU circuit boards. The manufacturer advises that replacement of these PSU circuit boards is necessary in order to obtain adequate clearance between the ballast and transistors.

The FAA has determined that modification of the ballasts must be accomplished in accordance with Revision 02 of the service bulletin, and has revised paragraph (d)(1) of the AD accordingly. Additionally, a ''NOTE 3'' has been added to the proposed AD to give credit to operators that may have previously accomplished the modification in accordance with Revision 01 of the service bulletin, dated November 15, 1999.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 78 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 97–13–06 take approximately 7 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 $420 per airplane.

The new actions that are proposed in this AD action would take as much as 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided free of charge by the manufacturer. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be as much as $42,120, or $540 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 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 proposal would not have federalism implications under Executive Order 13132.

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 39–10052 (62 FR 33545, June 20, 1997), and by adding a new airworthiness directive (AD), to read as follows:

SAAB Aircraft AB: Docket 99–NM–354–AD. Supersedes AD 97–13–06, Amendment 39–10052.

Applicability: This AD applies to the following airplanes:

Model SAAB 340B series airplanes having serial numbers –342 and –359 through –460 inclusive, certificated in any category; except those on which Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999 (Saab Modification No. 2936), has been incorporated; and

Model SAAB 2000 series airplanes having serial numbers –004 through –063 inclusive, certificated in any category; except those on which Saab Service Bulletin 2000–33–015, dated January 29, 1999 (Saab Modification No. 6148), has been incorporated.

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 (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area, accomplish the following:

Restatement of Requirements of AD 97–13–06

Inspections

(a) For Model SAAB 340B series airplanes having serial numbers -342 and -359 through -439 inclusive; and Model SAAB 2000 series airplanes having serial numbers -004 through -059 inclusive: Within 30 days after July 7, 1997 (the effective date of AD 97–13–06, amendment 39–10052), accomplish the actions required by paragraphs (a)(1), (a)(2), and (a)(3), as applicable.

(1) For all airplanes: Inspect the fluorescent lamps installed in the ceiling/window of the lavatory and passenger compartment to ensure correct installation; and inspect the lampholders for discrepancies such as discoloration, evidence of electrical arcing at the light tube pins, charring or melting, or insecure back covers; in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable.

(i) If any lamp is installed incorrectly, prior to further flight, install the lamp correctly in accordance with the applicable service bulletin.

(ii) If any discrepancy is found, prior to further flight, replace the lampholder with a new lampholder in accordance with the applicable service bulletin.

(2) For Model SAAB 340B series airplanes on which a Page Aerospace lampholder having part number (P/N) D756–02–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 340–33–040, Revision 02, dated February 20, 1997.

Note 2: Installation of retaining clips on Page Aerospace lampholders that was

accomplished prior to July 7, 1997, in accordance with Saab Service Bulletin 340–33–040, Revision 01, dated January 31, 1997, also is considered acceptable for compliance with the requirement of paragraph (a)(2) of this AD.

(3) For Model SAAB 2000 series airplanes on which a Page Aerospace lampholder having P/N C756–10–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 2000–33–009, dated June 19, 1996.

Reinspections Following Replacement or Reinstallation

(b) Following the accomplishment of the requirements of paragraph (a) or paragraph (c) of this AD: If any fluorescent lamp or lampholder is replaced or reinstalled, within 7 days after accomplishing such replacement or reinstallation, reinspect the lamp to ensure it is still in the correct position, in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997, or Revision 01, dated June 26, 1998 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable. If any lamp is installed incorrectly, prior to further flight, make corrections to ensure correct installation in accordance with the applicable service bulletin.

New Requirements of This AD

Inspections for Additional Airplanes

(c) For airplanes other than those specified in paragraph (a) of this AD: Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (a) of this AD, and thereafter accomplish the requirements of paragraph (b) of this AD.

Terminating Modification

(d) For all airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of the actions required by the applicable paragraph constitutes terminating action for the requirements of this AD.

(1) For Model SAAB 340B series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999. Concurrent with the replacement, modify the ballasts to ensure sufficient clearance between the ballast and certain transistors, in accordance with Saab Service Bulletin 340–33–049, Revision 02, dated February 2, 2000.

(2) For Model SAAB 2000 series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 2000–33–015, dated January 29, 1999.

Note 3: Modification of the ballasts for sufficient clearance in accordance with Saab Service Bulletin 340–33–049, Revision 01, dated November 15, 1999, is acceptable for compliance with the modification requirement of paragraph (d)(1) of the AD.

Spares

(e) As of the effective date of this AD, no person shall install a fluorescent lampholder having Page Aerospace P/N D756–02–001 or Page Aerospace P/N C756–10–001 on any Model SAAB 340B or SAAB 2000 series airplane, unless the lampholder has been modified in accordance with the requirements of paragraph (a)(2) or (a)(3) of this AD, as applicable.

Alternative Methods of Compliance

(f)(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, 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–13–06, amendment 39–10052, are approved as alternative methods of compliance with this AD.

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

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

Note 5: The subject of this AD is addressed in Swedish airworthiness directives 1–113R1 and 1–114R1, both dated September 8, 1998.

Issued in Renton, Washington, on June 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14883 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–4]

Proposed Revision of Class E Airspace; Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Ambler, AK. The establishment of a Global Positioning System (GPS) instrument approach to runway (RWY) 36 at Ambler, AK, has made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ambler, AK.

DATES: Comments must be received on or before July 28, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 00–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AAL–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation

Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Ambler, AK, due to the establishment of a new GPS instrument approach procedure to RWY 36. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Ambler, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Ambler, AK [Revised]

Ambler Airport, AK
(Lat. 67°06′22″ N, long. 157°51′13″ N)
Ambler NDB
(Lat. 67°06′24″ N, long. 157°51′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ambler Airport and within 3.5 miles each side of the 193° bearing of the Ambler NDB extending from the 6.3-mile radius to 7.2 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 4 miles west and 8 miles east of the Ambler NDB 193° bearing extending from the NDB to 20 miles southwest of the NDB, and 4 miles either side of a line from lat. 66°20′57″ N, long., 158°54′51″ W to lat. 66°56′52″ N, long. 158°01′13″ W and 4 miles either side of a line from lat. 66°51′40″ N, long. 158°55′07″ W to lat. 66°56′52″ N, long. 158°01′13″ W.

* * * * *

Issued in Anchorage, AK, on June 6, 2000.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–14862 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA02

Direct Grant Programs

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document reopens the comment period for the proposed amendments to part 75 of the Education Department General Administrative Regulations (EDGAR) that would implement new options for the Department of Education's application review process for discretionary grants. On April 17, 2000 we published in the **Federal Register** (65 FR 20698) a notice of proposed rulemaking proposing amendments to part 75 of EDGAR. The deadline for comments on the proposed regulations was June 1, 2000. We are reopening the original 45-day comment period for the proposed regulations until June 30, 2000, because we have received requests to give stakeholders more time to comment on the proposed changes.

DATES: We must receive your comments on or before June 30, 2000.

ADDRESSES: All comments concerning the proposed regulations should be addressed to: Valerie A. Sinkovits, U.S. Department of Education, 400 Maryland Avenue, SW., room 3652, ROB–3, Washington, DC 20202–4838. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term ''Redesign'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Valerie Sinkovits, Telephone: (202) 708–7568. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on

request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at any of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: June 6, 2000.

Thomas P. Skelly,

Acting Chief Financial Officer.

[FR Doc. 00–14755 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV–6013b; FRL–6714–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the West Virginia hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan submitted on August 18, 1999 by the West Virginia Division of Environmental Protection (WV DEP), and the subsequent plan amendment of April 19, 2000. The plan establishes emission limitations for existing HMIWIs, and provides for the implementation and enforcement of those limitations. In the final rules section of today's **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this rule. If EPA receives relevant 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 rule. 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: Comments must be received in writing by July 13, 2000.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, of the same title, which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00–14767 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT–001b; FRL–6714–5]

Clean Air Act Proposed Full Approval of Operating Permit Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is preparing to approve the operating permit program submitted by the State of Montana. Montana's program was submitted for the purpose of meeting the Federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is promulgating full approval of the Montana program as a direct final rule without prior proposal because the State is currently running the program and the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this rule. 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. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Comments must be received in writing on or before July 13, 2000.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business at the above address. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, EPA, Region VIII, (303) 312–6435.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules section of this **Federal Register**.

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

Dated: June 2, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator.

[FR Doc. 00–14769 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6715–3]

Reopening of Comment Period on Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act (SDWA) Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule revising the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectant and Disinfection Byproducts Rule (Stage 1 DBPR), and the Primacy Rule which was published in the **Federal Register** April 14, 2000 (65 FR 20314). The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: Written comments must be received by July 13, 2000.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–11, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The record for this proposed rule is established under docket number W–99–11. The record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, US EPA, 401 M Street, SW., Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov.* No facsimiles (faxes) will be accepted. See **SUPPLEMENTARY INFORMATION** section for further details about comment submission.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION: The reopened comment period for the proposed rulemaking now ends July 13, 2000. All comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking will be considered and incorporated into the Record.

Additional Information for Commenters

Please submit an original and three copies of your comments and enclosures (including references). Comments must be received by July 13, 2000.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. Electronic comments must be submitted as a WP5/6/7/8 file or an ASCII File, avoiding the use of special characters and form and encryption. Electronic comments must be identified by the docket number W–99–11.

Dated: June 8, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–14885 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 97–82; FCC 00–197]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In this document the Federal Communications Commission (Commission) tentatively concludes that it is in the public interest to modify certain aspects of its rules for the upcoming C and F block auction. The Commission seeks public comment on various issues, including proposals to reconfigure the size of C block spectrum licenses; to modify the entrepreneur eligibility restrictions for certain licenses in both large and small markets; and to retain the spectrum cap.

DATES: Comments are due on or before June 22, 2000 and reply comments are due on or before June 30, 2000. Final *ex parte* presentations are due on July 12, 2000.

ADDRESSES: All comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Further Notice of Proposed Rule Making (*Further Notice*) adopted on May 31, 2000, and released on June 7, 2000. The complete text of this *Further Notice,* including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Further Notice of Proposed Rule Making

I. Introduction and Overview

1. On January 12, 2000, the Wireless Telecommunications Bureau (''Bureau'') announced that a broadband Personal Communications Services (''PCS'') C and F block auction—Auction No. 35—would begin on July 26, 2000. Under the Commission's current rules, applicants for C and F block auctions must meet specified financial size requirements to qualify as ''entrepreneurs'' and to be eligible to compete in the auction. Following the announcement of Auction No. 35, the Commission received several formal requests to waive, modify, or eliminate the C and F block auction and service rules. These requests seek, among other things, modification of the various C and F block eligibility requirements for the upcoming auction, reconfiguration of available 30 MHz C block licenses, and adoption of an alternative bidding plan.

2. As justification for the proposed changes, the petitioners point to the relatively small percentage of C and F block licensees that have begun providing service in the years since the initial entrepreneurs' block auctions were held. They also note the increasing trend in the wireless marketplace toward nationwide service, their need for additional spectrum in order to ease spectrum capacity constraints, and their financial readiness to construct and

operate C and F block systems should they win licenses in the upcoming auction. Numerous parties have filed opposing and supportive pleadings in response to these petitions. Opponents argue that businesses that qualify as ''entrepreneurs'' under our rules are more likely than larger companies to provide innovative and niche services and to serve rural areas; that the Commission's previous C and F block installment payment program was largely responsible for the dearth of build-out among C and F block licensees; and that changing the eligibility criteria at this juncture would be detrimental to the existing business plans of current C and F block ''entrepreneur'' licensees developed based upon these rules, and to the ability of small businesses to secure needed financing to provide valuable wireless services.

3. Several parties have also asked that we consider whether we should revise, waive, or forbear from applying the Commercial Mobile Radio Service (''CMRS'') spectrum cap for Auction 35. In support of these requests, the petitioners assert that the demand for CMRS services has significantly increased and created substantial spectrum constraints over the last few years. Further, petitioners contend that lifting the spectrum cap would better enable them to roll out Third Generation (''3G'') and other advanced services, as well as otherwise help ensure the rapid and efficient development of the C and F block spectrum. Those opposing these requests claim that the current spectrum cap allows sufficient spectrum in local geographic markets to roll out 3G services in the foreseeable future and that petitioners failed to establish any basis for waiving the spectrum cap.

4. Upon consideration of the petitions and responsive pleadings received to date, we have tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. Accordingly, we seek comment in this Further Notice on the following specific proposals to:

• *Reconfigure C Block Spectrum License Size*

We tentatively conclude that we will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses.

• *Apply a Tiered Approach to Basic Trading Areas (BTAs)*

We tentatively conclude that we will divide BTAs into two tiers according to the population size of the BTA. Under this proposal, ''Tier 1'' would comprise BTAs at and above a 2.5 million population threshold; and ''Tier 2'' would comprise BTAs below that population threshold.

• *Eliminate Eligibility Restrictions For Certain Licenses In Tiers*

We further propose to remove the auction eligibility restrictions for certain of the newly reconfigured 10 MHz C block licenses, thereby establishing ''open'' bidding for these licenses. We tentatively conclude that we will allow ''open'' bidding (*i.e.,* remove the eligibility restrictions) for two of the three 10 MHz C Block licenses in Tier 1, and one of the three 10 MHz C Block licenses in Tier 2. We also invite comment on whether to allow ''open'' bidding for all three of the 10 MHz C Block licenses in Tier 1, and two of the three 10 MHz C Block licenses in Tier 2.

We tentatively conclude that we will allow ''open'' bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold.

We seek comment on whether to allow ''open'' bidding for all available F block licenses. We also seek comment on whether, instead, to adopt a tiered approach to eligibility for F block licenses or to retain existing F block eligibility requirements.

• *Retain Our Current License Grouping for Bidding in the Auction*

We tentatively conclude that we will retain BTA service areas and a license-by-license bidding design for Auction No. 35.

• *Clarify the Grandfather Exception*

We invite comment in this proceeding on a number of issues raised by parties seeking reconsideration of the grandfather exception to the eligibility rules, which is provided in § 24.709(b)(9)(i) of the Commission's rules. On the issue of how the exception applies in a merger situation, we tentatively conclude that when each of the merging entities is eligible for the ''grandfather'' exception, the exception extends to the resulting entity, but that when one (or more) of the merging entities is not eligible for the ''grandfather'' exception, the exception does not extend to the resulting entity.

• *Revise the Bidding Credits Available for Auction No. 35*

We seek comment on whether to retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to ''open'' bidding or whether to increase them to 25 percent and 40 percent, respectively. We also seek comment on whether we should change the bidding credits for licenses subject to ''closed'' bidding, *i.e.,* bidding where eligibility restrictions apply.

• *Alter the Transfer Requirements for Certain Licenses*

Licenses Won in ''Open'' Bidding: We tentatively conclude that we will eliminate the § 24.839 eligibility requirements for the assignment or transfer of control of C and F block licenses won in Auction No. 35 ''open'' bidding.

Licenses Won in ''Closed'' Bidding: We seek comment on allowing a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules.

Licenses Held by Incumbent Licensees: We seek comment on allowing an incumbent licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules. We also seek comment on whether we should allow some flexibility for incumbent licensees to transfer certain licenses where the carrier can demonstrate ''substantial service'' throughout its system, rather than on a market-by-market basis.

• *Eliminate the License Cap*

We tentatively conclude that we will eliminate the § 24.710 cap on the number of C and F block licenses a single entity may win at auction.

• *Retain the Spectrum Cap*

We tentatively conclude that we will retain the current spectrum cap.

II. Background

5. In the Omnibus Budget Reconciliation Act of 1993, Congress authorized the Commission to use systems of competitive bidding to award licenses for rights to use the radio spectrum. This authorization is codified as section 309(j) of the Communications Act. Section 309(j)(3) directs the Commission to ''seek to promote'' a number of objectives, including:

• The development and rapid deployment of new services for the benefit of the public, including those residing in rural areas;

• Promoting economic opportunity and competition and ensuring that new and innovating technologies are readily accessible to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, *i.e.,* ''designated entities;''

• Recovery for the public of a portion of the value of the public spectrum resource made available for commercial use;

• Avoidance of unjust enrichment through the methods employed to award uses of that resource; and

• Efficient and intensive use of the electromagnetic spectrum.

6. Section 309(j)(4) directs the Commission, in prescribing regulations to implement the objectives of section 309(j)(3), to, *inter alia,* (i) establish performance requirements to ensure prompt delivery of service to rural areas and prevent warehousing of spectrum by licensees; (ii) prescribe area designations and bandwidth assignments that promote an equitable geographic distribution of licenses and services, economic opportunity for a wide variety of applicants, including designated entities, and rapid deployment of services; and (iii) ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider using bidding preferences and other procedures.

7. The Commission outlined the original framework for C and F block auctions in 1994, establishing the C and F blocks as ''set-aside'' blocks for ''entrepreneurs'' in which eligibility would be restricted to entities below a specified financial threshold. The Commission concluded that if it was to meet the Congressional goals of promoting economic opportunity and competition by dissemination of licenses among a wide variety of providers, it should take certain affirmative steps to mitigate barriers to entry faced by smaller businesses. The Commission also stated its intention to take steps to assure that designated entities that win licenses have the opportunity to become strong competitors in providing service. Thus, in attempting to address the imbalance between small businesses' and large businesses' relative abilities to access capital, the Commission established two set-aside blocks (C and F) in which large companies (those over the financial thresholds) would be prohibited from bidding or holding licenses for a period of time.

8. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C and F block licenses that had been returned to, or reclaimed by, the Commission. Since the establishment of C and F block rules in 1994, no auctions, other than the C and F block auctions, have been conducted on a closed basis due to eligibility restrictions. Instead, in the other 23 auctions held by the Commission, we have typically provided opportunities for small businesses through bidding credits without a set-aside.

9. Since adoption of the original rules for auctions of C and F block licenses, these rules have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services. Two-and-a-half years ago, in this docket, the Commission responded to requests from some C block auction winners to revise the auction rules and procedures for the C and F blocks. In the 1997 *C Block Second Report and Order,* as modified by the 1998 *C Block Reconsideration Order,* the Commission created a package of financial restructuring options to be offered to C block licensees experiencing financial difficulties in the wake of Auctions No. 5 and No. 10. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses Second Report and Order, (*C Block Second Report and Order)* 62 FR 55348 (October 24, 1997) and *(C Block Reconsideration Order)* 63 FR 17111 (April 8, 1998). The Commission also decided in the *C Block Second Report and Order,* as modified by the 1998 *C Block Fourth Report and Order,* to allow, for a period of two years from the beginning of the first post-restructuring C block auction (Auction No. 22), participation in bidding for C block licenses by entities that had participated in Auctions No. 5 and 10, even if such entities had since become too large to qualify as entrepreneurs under the Commission's rules. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses Fourth Report and Order, *(C Block Fourth Report and Order),* 65 FR 14213 (March 16, 2000).

10. Prior to the start of Auction No. 22, three C block licensees filed for bankruptcy protection. Other C block licensees defaulted on payments owed for their licenses. Bankruptcy filings and payment defaults by other C block licensees followed the auction; and, to date, a total of 232 C and F block licenses, covering a population (''pops'') of approximately 191 million, have been involved in bankruptcy proceedings and/or defaulted on license payments. It appears that the vast majority of the defaulted licenses have never been placed into service.

11. The Bureau, pursuant to its delegated authority, announced that we would be holding a C and F block auction on July 26, 2000. The current inventory for this auction includes 93 30-MHz C block licenses, 21 15-MHz C block licenses and 40 10-MHz F block licenses for operation on frequencies for which previous licenses have automatically cancelled, *see* 47 CFR 1.2110(f)(4)(iii) and (iv) or have been returned to the Commission. The announcement of Auction No. 35 prompted petitions from SBC Communications Inc. (''SBC''), Nextel Communications, Inc. (''Nextel''), and other parties asking that we waive, modify, or eliminate our entrepreneur eligibility requirements for participation in the auction. In response to those filings, a number of parties also proposed that we make other modifications to our C and F block rules. Additionally, US WEST Wireless, LLC (''US West'') and Sprint Spectrum L.P. dba Sprint PCS (''Sprint'') filed a joint petition for reconsideration of our, Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97–82. The *C Block Fourth Report and Order* addressed certain of the rules governing auctions of C block licenses. Sprint and US West request that the Commission eliminate its eligibility restrictions for participation in the upcoming auction as well as modify other C block rules. In addition, Verizon Wireless (''Verizon'') petitioned the Commission for clarification or reconsideration of our two-year C block auction eligibility ''grandfather'' rule, § 24.709(b)(9)(i). The SBC, Nextel, and US West/Sprint petitions were placed on public notice, prompting more than 210 comments and other pleadings in response. A number of parties argue that all, or at least some portion, of the C and F block spectrum should be open to all participants in order to satisfy the Commission's obligations under section 309(j)(4). Other parties oppose these arguments.

12. We have also received petitions from three parties that, under our proposed revisions to the C block rules, would become eligible to bid for licenses in the upcoming C and F block auction. These parties request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to the spectrum available in Auction No. 35. We placed these petitions on public notice and received comments from 23 parties and reply comments from 14 parties.

13. Based upon the extensive record before us, and our continuing obligation to weigh important spectrum policy management considerations in addressing the public interest, we have tentatively concluded that we will revise our rules for C and F block spectrum. We set forth our proposals and tentative conclusions concerning possible revisions in the rules in this *Further Notice.*

III. Discussion

A. Reconfiguration of C Block Spectrum License Size

14. *Background.* In 1994, the Commission established a band plan for broadband PCS that provides for 30 MHz ''C block'' licenses and 10 MHz ''F block'' licenses. Each C and F block license covers a specific geographic service area known a Basic Trading Area (''BTA''). BTAs fall within still larger geographic service areas known as Major Trading Areas (''MTAs''). BTA and MTA service areas are based on the Rand McNally 1992 Commercial Atlas Marketing Guide. As noted, in 1997 the Commission created a package of financial restructuring options designed to provide limited relief to C block licensees experiencing financial difficulties in the wake of Auction No. 5. Under one of the available options, licensees were allowed to disaggregate 15 MHz of each of their 30 MHz C block licenses in an MTA. In disaggregating a 30 MHz C block license, a licensee would retain a 15 MHz C block license and would return the remaining 15 MHz of C block spectrum to the Commission for inclusion in the next C block auction, Auction No. 22. Because several of the available 15 MHz C block licenses were not won in Auction No. 22, the license inventory for Auction No. 35 includes both 15 and 30 MHz C block licenses, as well as 10 MHz F block licenses.

15. A number of parties have suggested various proposals to alter the Commission's current band plan. Several parties propose that we subdivide each available 30 MHz C block license into three 10 MHz licenses. Others suggest that we subdivide each available 30 MHz C block license into a 20 MHz and a 10 MHz license. Other parties argue against subdividing the C block license spectrum size.

16. *Discussion.* We tentatively conclude that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three 10 MHz C block licenses. We believe that by increasing the number of available licenses through this reconfiguration, taken together with our proposals to lift certain of our eligibility requirements, we will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. We further tentatively conclude that a 10 MHz C block license is a viable minimum size for voice and some data services including Internet access and provides an appropriate building block for bidders that wish to acquire a larger amount of spectrum. Accordingly, we propose to permit bidders to aggregate the 10 MHz C block licenses, subject only to the overall 45 MHz CMRS spectrum cap, and the relevant remaining eligibility restrictions for these licenses. We seek comment on this proposal and our tentative conclusions. We also seek comment on whether a different configuration, including adoption of blocks of 20 MHz where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular geographic markets.

17. Finally, with respect to aggregation of 10 MHz licenses, we note that the Wireless Telecommunications Bureau recently sought comment on procedures for implementing a combinatorial (''package'') bidding design for the auction of licenses in the 700 MHz bands, which would facilitate aggregations of complementary licenses into larger blocks. *See* Auction of Licensees in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000; Comment Sought on Modifying the Simultaneous Multiple Round Auction Design to Allow Combinatorial (Package) Bidding, 65 FR 35636 (June 5, 2000). While given the much larger number of licenses in this auction, true combinatorial bidding would be more complex and perhaps impractical to implement in the near term, we invite parties to suggest ways in which bidders could efficiently aggregate licenses in the auction process.

B. Eliminate Eligibility Restrictions for Certain Licenses Under a Tiered Approach

18. *Background.* Under the Commission's current rules, only qualified ''entrepreneurs'' are permitted to participate in auctions of C and F block licenses. To be considered an entrepreneur eligible for C and F block auction participation, an applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than $125 million in each of the last two years and must have total assets of less than $500 million. *See* 47 CFR 24.709.

19. We seek comment on proposals to lift the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Our proposals take into account the contention of many entrepreneurs and their representatives that argue that fairness requires the Commission to continue to maintain the present eligibility requirements. These parties contend that entrepreneurs developed business plans in the expectation that the C and F block licenses would remain set aside for them and that any auctions of reclaimed C and F block licenses would be subject to the same eligibility restrictions that applied in the original auctions of those licenses. These parties also point out that successful entrepreneurs have achieved substantial public interest benefits by providing types of services and service packages not offered by larger providers, and extending service to rural markets. These parties also argue that the continuation of the eligibility restrictions will better serve their ability to expand their service area as a competing carrier and to enter roaming relationships with other regional carriers.

20. Our proposals also take into account some of the arguments of several CMRS providers seeking to participate in the upcoming auction that currently do not qualify for entrepreneur eligibility. Such providers argue that opening up the entire auction to all bidders would be pro-competitive because it would allow them to acquire additional spectrum to meet capacity concerns, provide advanced services, and increase the size of their subscriber ''footprints.'' They contend that they, unlike many entrepreneurs, possess the operational expertise and substantial resources necessary to construct and successfully operate PCS systems in already highly competitive markets. These commenters also point to evidence that suggests that the set-aside of C and F Block spectrum has not been successful in encouraging entrepreneurs to participate in the provision of spectrum-based services, particularly in large markets.

21. We note that, in apparent recognition of the Commission's obligation to balance a number of spectrum policy considerations, many parties have offered compromise

suggestions as alternatives to the current C block rules should the Commission choose not to adopt their preferred approaches. Some commenters, including a number of entrepreneurs, have suggested compromise alternatives that would eliminate the set-aside (in whole or in part) for markets with populations in excess of certain specified amounts ranging from 700,000 to five million. According to these commenters, such compromise alternatives to the current C block rules would provide companies with greater financial resources access to licenses for markets with larger populations, without foreclosing the opportunity for entrepreneurs to bid for those licenses. The suggested alternatives would also maintain the eligibility restrictions in markets where entrepreneurs might have a reasonable chance of success.

22. Some commenters suggest compromises that would not use tiers, but would disaggregate the 30 MHz C block licenses into three 10 MHz blocks and would open up the bidding on one or two of the three 10 MHz licenses in all markets.

23. While most of the commenters have focused on the Commission's treatment of the C block spectrum, as a general matter, current entrepreneurs argue in favor of keeping the 10 MHz F block licenses as restricted. On the other hand, companies currently ineligible to participate in Auction 35 argue in favor of open eligibility for those licenses.

24. *Discussion.* As the expert agency charged with the management of the nation's radio spectrum, the Commission must continually evaluate the provision of service to the American public, weigh a variety of public interest considerations, and assess the changing needs of the industry. In doing so, we must always remain cognizant of our statutory obligations. These obligations often require that we balance a number of different, and at times competing, spectrum policy goals. In discharging these responsibilities, we seek to provide meaningful opportunities to small businesses, to speed the deployment and development of new services to the public to encourage the efficient use of spectrum, and to recover for the public a portion of the value of spectrum.

25. When we adopted the original rules for C and F block spectrum in 1994, PCS was in its infancy. Since 1994, circumstances in the industry have changed. In light of significant technology developments and increased demand for spectrum, it is appropriate for the Commission to consider reassessing the proper balance of its spectrum policies including whether its current C and F block rules continue to serve the public interest in all respects. In crafting rules for the upcoming auction, we recognize that we cannot overlook the difficulties that followed the original C block spectrum auction and our commitment, to promote opportunities for designated entities. We maintain our commitment to provide meaningful opportunities for entrepreneurs, including those that participated in our most recent auction of C block spectrum. We also recognize that some qualifying entrepreneurs have been successful innovators, providing service to rural markets and niche services in other markets. Our desire to promote the continued success of such entities, as they seek to fill in gaps in their service areas or otherwise strive to expand their service offerings, also factor into our decision regarding the extent to which we should revise our current rules.

26. Thus, we believe that entrepreneurs raise legitimate issues about preserving the eligibility restrictions on at least a portion of the spectrum that will be awarded in the upcoming auction. However, based on the demand for spectrum to satisfy congestion, new technology and competitive needs, we tentatively conclude that it would serve the public interest to make some additional spectrum available to all interested bidders. In balancing these factors, we believe parties on both sides of this debate have suggested a number of possible compromises that better advance the public interest than either maintaining the status quo or, conversely, eliminating the eligibility restrictions entirely. In particular, we think the parties suggesting tiering approaches have proposed creative solutions to balancing the competing interests by recognizing both that the need for additional unrestricted spectrum is greatest in the larger markets and that the track record for success for smaller entities is strongest in mid-sized and smaller markets.

27. With these factors in mind, we seek comment on the following proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions. Consistent with several of the recommendations we have received, these proposals vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets.

28. *Available 30 MHz C block licenses:* For markets with available 30 MHz C block licenses, we seek comment on a proposal based on our tentative conclusion to reconfigure these licenses into three 10 MHz licenses. Our proposal is further based on dividing the available BTAs into two tiers: ''Tier 1'' would comprise BTAs with populations at or above a certain threshold, and ''Tier 2'' would comprise BTAs below that population threshold. We tentatively conclude that we should allow ''open'' bidding (i.e. remove eligibility requirements) for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. We seek comment on this tentative conclusion.

29. We recognize that in balancing the interests served by preserving meaningful opportunities for designated entities and those served by opening up the spectrum to bidding by all entities, there may be other proposals we should consider. Thus, we also seek comment on whether we should allow ''open'' bidding for all three of the 10 MHz C block licenses in Tier 1, and two of the three 10 MHz C block licenses in Tier 2.

30. *Tiers:* We also seek comment on what population threshold we should use to divide the Tier 1 and Tier 2 BTAs. As discussed, the record provides some indication that designated entities have had greater success in markets with smaller populations, particularly below the top twenty markets. Markets with larger populations inevitably require more capital to build out and provide service. Moreover, as noted by commenters, there is evidence that spectrum is needed by incumbents to provide new generation wireless services and to alleviate congestion or by new entrants to fill out service footprints. Accordingly, we tentatively conclude that a population of 2.5 million or greater is the proper cut-off for Tier 1 BTAs (the 17 largest markets); however, we also seek comment on establishing the threshold for Tier 1 at those BTAs with populations at or greater than either 2 million (the 23 largest markets) or 1.5 million (the 32 largest markets). We recognize that other alternatives might also make sense. For example, we might also create a ''Tier 3'' for BTAs with populations below 700,000, the demarcation line that SBC recommends, establishing in this tier a larger set-aside for entrepreneurs. We also might instead decline to adopt a tiered approach at all, instead applying changes in eligibility restrictions to all BTAs, regardless of size. We seek comment on these alternatives, as well as on other possible tier divisions and other options for opening the bidding for some of the available C block licenses.

31. *Available F block licenses:* We seek comment on eliminating the

eligibility requirements for all of the 10 MHz F block licenses available in Auction No. 35. We note that from a historical perspective, F block did not face the same types of problems and difficulties as C block. This difference is evidenced by the fact that the Commission did not see the need to allow F block licensees to restructure their spectrum holdings, nor did it provide for the grandfathering of eligibility for entrepreneur entities in future F block auctions. Thus, we have consistently treated the F block spectrum differently than C block in recognition of the fact that the history of these spectrum blocks evolved in divergent manners. Accordingly, we may not be faced with the same equity considerations in maintaining a set-aside of F block spectrum as we are for C block. Moreover, we note that in virtually all markets where there is an available F block license, there is a 30 MHz license held by a current C block entrepreneur. Thus, there is already significant set-aside spectrum in each of these markets. Further, despite the lack of historical controversy regarding the F block spectrum, build out of these licenses has not progressed as quickly as we may have anticipated, especially in larger markets. Allowing open eligibility for all 10 MHz F block licenses might lead to more expeditious provision of service to American consumers. Alternatively, we recognize that we could adopt a tiered approach similar to the proposals for C block licenses discussed, or we could retain the existing F block eligibility requirements. We seek comment on these alternatives.

32. *15 MHz C block licenses:* Finally, we propose, and seek comment on, eliminating the eligibility requirements for all 15 MHz C block licenses that will be available in Auction No. 35 and in future C block auctions. As noted previously, all of the 15 MHz licenses available in Auction No. 35 were available in restricted Auction No. 22, yet remained unsold. Accordingly, we believe that it is appropriate to make these licenses, located principally in rural markets, immediately available to any interested bidder.

33. *Unsold C and F block licenses:* We also seek comment on whether we should establish a rule that lifts eligibility restrictions on any C or F block licenses that remain unsold after Auction No. 35 or in other future auctions. Such licenses could then promptly be put up for auction under open bidding.

C. License Grouping for Bids

34. *Background.* In past C and F block auctions (as well as D and E block auctions), participants have bid separately for each license. Nextel proposes that all available 30 MHz licenses be reconfigured into 20 MHz and 10 MHz licenses and that the newly created 20 MHz C block licenses and the available 15 MHz C block licenses be offered together on a ''bulk bid'' (*i.e.,* winner take all) basis in an expedited auction.

35. *Discussion.* We tentatively conclude that we will take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis as we have done in the past. We are persuaded by commenters that the massive scale of Nextel's bulk bid proposal (or something similar based upon a 10 MHz C block license configuration) would exclude all but a very few competitors. Small entities would be hard pressed to obtain the financing necessary to win and pay for the licenses and construct the systems included in the bulk bid proposal. Many other carriers would be constrained from participating by the CMRS spectrum cap. While we agree with Nextel that bidding for individual licenses will make it somewhat more challenging for it to win the very broad aggregation of licenses it seeks to acquire, we do not think this requires us to resort to its bulk bid proposal. Experience in our auctions to date demonstrates that significant aggregations of licenses through the auction process are feasible. For this reason, we believe that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time provides carriers who have intense spectrum needs in a particular market the opportunity to compete for licenses as well.

D. Grandfather Exception

36. *Background:* In the *C Block Second Report and Order*, the Commission established in § 24.709(b)(9)(i) a ''grandfather'' exception to the entrepreneur eligibility requirement for participation in C block auctions. Under that exception, all entities that had been eligible for and had participated in Auction No. 5 or Auction No. 10 would be eligible to bid on C block licenses in Auction No. 22, regardless of their financial size at the time of the auction. We declined to apply the ''grandfather'' exception to bidding on F block licenses, based on our belief that F block licensees did not have the same need for financial relief. In the *C Block Fourth Report and Order*, we decided, in fairness to other future bidders, to limit the grandfather exception to a two-year period beginning on the start date of Auction No. 22, *i.e.,* through March 23, 2001. In the *C Block Fourth Report and Order*, we denied a petition by Omnipoint asking that we extend the grandfather exception indefinitely.

37. *Discussion*: In a petition for reconsideration or clarification of the *C Block Fourth Report and Order*, Verizon asks us to reexamine the grandfather exception and limit resulting eligibility to those Auction No. 5 and 10 participants that won licenses in the auctions and then returned spectrum pursuant to the Commission's C block restructuring options. We seek comment on the issues raised in the Verizon petition and, more generally, on whether the grandfather exception should be revised or clarified in light of current circumstances.

38. We note that Nextel makes arguments similar to Verizon's in response to the US West/Sprint petition and also objects to the fact that the grandfather exception in that it does not extend to Auction No. 11 and Auction No. 22 participants. We have received notice that currently ''grandfathered'' companies intend to combine with other carriers, some of which are also eligible for the grandfather exception. We believe that the eligibility of successor entities for participation in ''closed'' bidding is a subject that may also be ripe for clarification in our upcoming order. Accordingly, we seek comment on our tentative conclusion that upon the merger of two entities, each of which is eligible for the ''grandfather'' exception, the exception extends to the resulting entity, but that, upon the merger of two entities, only one of which is eligible for the ''grandfather'' exception, the exception does not extend to the resulting entity. We recognize that our tentative conclusion is based upon simplified examples, and we encourage comment on how to determine C and F block eligibility when faced with more complex transactions.

E. Bidding Credits

39. Under current rules, a winning C or F block bidder that qualifies as a small business (*i.e.,* a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than $40 million for the preceding three years) or a small business consortium may use a bidding credit of 15 percent. *See* 47 CFR 24.712(a); 24.717(a); *id.*, 1.2110(e)(2)(iii). A winning bidder that qualifies as a very small business (*i.e.,*

a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than $15 million for the preceding three years) or a very small business consortium may use a bidding credit of 25 percent. *See* 47 CFR 24.712(b); 24.717(b); *id.,* 1.2110(e)(2)(ii).

40. Since the Commission first established the entrepreneurs' block set-aside and C and F block bidding credits, its experience has demonstrated that bidding credits without a set-aside enable small businesses to compete effectively in open auctions, even auctions of broadband PCS licenses.

41. *Discussion.* A number of entrepreneurial firms have argued that if we open eligibility for some portion of the C block spectrum, we should increase the bidding credits applicable to those licenses. We seek comment on whether we should retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to ''open'' bidding or whether we should increase them to 25 percent and 40 percent, respectively.

42. We also seek comment on whether we should change the bidding credits for licenses subject to ''closed'' bidding, *i.e.,* bidding where eligibility restrictions apply. For example, we could increase the bidding credits for these licenses, or we could keep them at their current level since the rationale for increasing the credits in open auctions—to provide additional assistance for small companies bidding against major wireless providers—does not apply to restricted auctions. Finally, we could eliminate bidding credits altogether on the ground that they are unnecessary and perhaps even counterproductive in ensuring opportunities for small business in the set-aside auctions. In this regard, we recognize that among those eligible to participate in the closed, entrepreneurs' auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. We seek comment on these various proposals.

F. Transfer Requirements

43. To ensure that C and F block licensees did not take advantage of the eligibility set-aside by immediately assigning or transferring control of their licenses to entities that do not meet the eligibility requirements, the Commission established a holding rule for these licenses as well as unjust enrichment provisions. Under the current holding rule, C and F block licensees may, for the first five years from the date of their initial license grant, assign or transfer control of their C and F block licenses only to entities that meet the eligibility requirements or to other C and F block licensees that obtained their licenses while meeting the requirements. *See* 47 CFR 24.839. The Commission set the current holding period at five years to guarantee that a C or F block licensee would hold and build out the license until the first construction benchmark, which currently occurs five years after the date of licensing.

44. *Discussion.* We propose to modify our transfer requirements to correspond to our proposed changes in the eligibility requirements and to encourage rapid construction of C and F block systems. Specifically, we tentatively conclude that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, past or future, we seek comment on tying the holding period to completion of build-out requirements. Under this proposal, a licensee would be able to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. In this way, we can continue to minimize the trafficking of C and F block licenses won pursuant to closed bidding, while enhancing the likelihood of early build-out. We seek comment on these proposals.

45. Additionally, we seek comment on whether to allow some further flexibility for incumbent licensees that may not have fully satisfied their construction requirements for all their licenses. We wish to examine whether we should, under certain circumstances, evaluate a licensee's compliance with construction requirements on a system-wide basis. For example, we seek comment on whether we should allow a carrier to exchange and transfer licenses if the carrier can demonstrate ''substantial service'' throughout its system, rather than in that particular market. We also seek comment on any other modifications to our transfer restrictions that would provide incumbent licensees with the flexibility to restructure their business plans without decreasing their incentive to rapidly construct systems and place them in operation.

G. License Cap

46. *Background.* Section 24.710 of the Commission's rules prohibits an auction applicant from winning more than 98 C and F block licenses. The rule requires an applicant that is the high bidder for more than 98 C and F block licenses to withdraw its bids for a sufficient number of licenses to comply with the 98-license limit. The limit applies only to licenses won at auction, not to the total number of licenses that may be obtained post auction. When established in 1994, the license cap was intended to facilitate a fair distribution of licenses within the two blocks by preventing an entity from winning more than approximately 10 percent of the then-total of 986 C and F block licenses.

47. *Discussion.* We tentatively conclude that we will remove § 24.710 from the Commission's rules. In 1994, when the rule was implemented, the Commission anticipated holding only one C block and one F block auction. To date, however, four C and F block auctions have been held, with the fifth, Auction No. 35, scheduled and one or more additional auctions anticipated. Many different entrepreneurs have won C and F block licenses at auction, and substantial diversity among C and F block licensees continues to exist. The Commission has achieved its initial objective of a fair distribution C and F block licenses. Moreover, our proposal to reconfigure available 30 MHz C block licenses, if implemented, would create an additional 186 C block licenses, while adoption of our proposal to eliminate the eligibility restrictions for many of the available C and F block licenses would significantly enhance the likelihood that these licenses would be won by a variety of entities. Accordingly, we seek comment on this tentative conclusion.

H. Spectrum Cap

48. *Background.* The CMRS spectrum cap, set forth in § 20.6 of the Commission's rules, limits the amount of cellular, broadband PCS, and digital Specialized Mobile Radio (''SMR'') spectrum in which any entity may have an attributable interest in any geographic area. As discussed, we received petitions from three parties that request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to any spectrum awarded in the upcoming C and F blocks auction.

49. *Discussion.* We tentatively conclude that we should not grant the petitions seeking waiver of or forbearance from, the CMRS spectrum cap rules and, accordingly, we will

apply the cap to licenses of PCS C and F block spectrum to be auctioned in Auction No. 35. In September 1999, after extensive analysis of spectrum allocation and competitive market conditions, we determined in our *Biennial CMRS Spectrum Cap Order* that the CMRS spectrum cap, with some modification, continued to be a necessary and efficient means to promote competition and protect the public interest. Specifically, we concluded that a cap on this spectrum serves the public interest by promoting competition, preventing excessive concentration of licenses, providing incentives for licensees to make more efficient use of their spectrum, encouraging innovation, and promoting dissemination of licenses to a wide variety of applicants. We also concluded that the ''bright-line'' test afforded by the CMRS spectrum cap rule efficiently promoted regulatory certainty and regulatory efficiency. For any carrier with a demonstrable need for additional spectrum in a particular geographic area, we established and clarified a process by which it could obtain a waiver of the spectrum cap rule.

50. On the basis of the petitions and the record filed in response, we propose not to revise the CMRS spectrum cap in light of the upcoming auction and our proposed rule changes described herein. Since its inception in 1994, the cap on the 180 MHz of CMRS spectrum (*i.e.,* cellular A and B blocks, PCS A through F blocks, and digital SMR) has limited the amount of spectrum any carrier could aggregate from any part of the CMRS spectrum, including spectrum in the PCS C and F blocks, so as to ensure the many benefits of competition. The pleadings filed in connection with the upcoming auction contain no new material information regarding the costs and benefits of the spectrum cap and do not purport to make a waiver showing under the standard set forth in the *Biennial CMRS Spectrum Cap Order. See* 1998 Biennial Regulatory Review, Report and Order 64 FR 54564 (October 7, 1999). Our proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary. By proposing to divide the 30 MHz blocks of C block spectrum into 10 MHz blocks in the upcoming auction, we would better enable carriers to obtain additional spectrum without the need to exceed the CMRS spectrum cap. Carriers currently have accumulated spectrum up to the CMRS spectrum cap limits, either the general 45 MHz cap or the 55 MHz cap that applies to rural areas, in only a few locations. With regard to the C and F block spectrum to be auctioned, in every market almost all carriers could obtain additional spectrum in blocks of 10 MHz (or 15 MHz where applicable) and still comply with the spectrum cap without any need for disaggregation. As discussed, for those carriers that require more than 45 MHz of spectrum in the near term, we have established a process for granting waiver of the spectrum cap. We stated that we would consider granting a waiver of the spectrum cap in a particular geographic area to the extent a carrier could credibly demonstrate that the spectrum cap was having a significantly adverse effect on its ability to provide 3G or other advanced services. We also note that our year 2000 biennial review of the spectrum cap rule commences later this year. This proceeding will provide us another opportunity to revisit, in a more comprehensive manner than the pleadings before us, issues pertaining to the CMRS spectrum cap and whether it should be retained, modified, or eliminated. We seek comment on our tentative conclusion to retain the CMRS spectrum cap on the PCS C and F block spectrum scheduled for auction.

IV. Conclusion

51. Based on the foregoing, we seek comment on overall changes to the C and F block rules that take into account our competing statutory objectives to manage spectrum in the public interest. We conclude that this *Further Notice* will provide us with an opportunity to develop a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy.

V. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

52. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Regulatory Flexibility Act Analysis

53. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals and tentative conclusions set forth in the *Further Notice* in WT Docket No. 97–82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. In accordance with the RFA, the Commission will send a copy of this *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act Analysis

54. This *Further Notice* contains neither a new nor a modified information collection.

D. Comment Dates

55. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 22, 2000, and reply comments on or before June 30, 2000. 47 CFR 1.415, 1.419. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

56. Comments filed through ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Comments filed through the ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed; however, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal

Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. A courtesy copy should be delivered to Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4A–665, Washington, DC 20554. Parties should reference WT Docket No. 97–82 in their comments. Pursuant to § 1.1200(a) of the Commission's rules, presentations on issues in this proceeding will be prohibited after 7 p.m., July 12, 2000, until release of the Commission's order dealing with those issues. 47 CFR 1.1200(a) and 1.1202(a). All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

E. Ordering Clauses

58. Authority for issuance of this *Further Notice* is contained in sections 4(i), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

Initial Regulatory Flexibility Analysis

59. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities of the rules proposed in this *Further Notice* in WT Docket No. 97–82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the *Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives, of the Proposed Rules

60. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. To date, the Commission has received numerous requests to waive, modify, or eliminate certain of the C and F block auction and service rules for C and F block broadband Personal Communications Services (''PCS'') licenses. As discussed more fully in section E of this IRFA, *infra*, these requests seek, among other things, modification of the C and F block entrepreneur eligibility requirements for the upcoming C and F block auction, reconfiguration of available 30 MHz C block licenses, and adoption of an alternative bidding plan. Upon consideration of these numerous requests, the Commission has tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. This *Further Notice* sets forth the Commission's proposals and tentative conclusions concerning possible revisions to the rules governing the C and F block spectrum. The Commission believes that this *Further Notice* will provide the Commission with an opportunity to develop a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy. In addition, the Commission believes that the tentative conclusions and proposals set forth in this *Further Notice* help meet the goals and objectives of section 309(j), and promote competition while maintaining the fair and efficient implementation of the auctions program. Accordingly, the Commission seeks comment on all proposals, alternatives, tentative conclusions, and other issues described in the *Further Notice;* and the impact that such proposals, alternatives, tentative conclusions, and other issues may have on small entities.

B. Legal Basis

61. This action is authorized under sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

62. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. Generally, the RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a ''small business concern'' is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) meets any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.'' ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

63. The possible rule changes described in the *Further Notice* affect all small entities that choose to participate in the upcoming auction of C and F block spectrum and other future auctions of C and F block spectrum, including small businesses currently holding C and F block licenses and other small businesses that may acquire licenses through the auction. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F have been designated by the Commission as ''entrepreneurs' blocks,'' and participation in auctions of C and F block licenses is limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur as an entity, together with its affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application is filed. For blocks C and F, the Commission has defined ''small business'' as a firm, together with its affiliates, that had average gross revenues of not more than $40 million in the three previous calendar years, and ''very small business'' has been

defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These definitions have been approved by the SBA.

64. On May 6, 1996, the Commission concluded the first broadband PCS C block auction. On July 16, 1996, the second C block auction closed. On January 14, 1997, the broadband PCS D, E, and F block auction closed. Ninety bidders (prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses, placing high bids in these C and F block auctions were eligible for bidding credits and installment payment plans. On April 15, 1999, Auction No. 22, which included 347 C and F block licenses, closed. On January 12, 2000, the Wireless Telecommunications Bureau announced the Commission's intention to auction C and F block PCS licenses on July 26, 2000. The auction is currently scheduled to include ninety-three 30 MHz C block licenses, twenty-one 15 MHz C block licenses, and forty 10 MHz F block licenses. For purposes of our evaluations and conclusions in this IRFA, we assume that all of the original 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *Further Notice,* are small entities. In addition to the 178 original small business licensees that may participate in the auction of the C block licenses, a number of additional small business entities may seek to acquire licenses through auction; thus, these business entities would be affected by these rules.

D. Reporting, Recordkeeping, and Other Compliance Requirements

65. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of this Notice. We seek comment on this tentative conclusion. Auction participants will need to follow the standard procedural rules used for broadband PCS spectrum auctions, including application and payment rules.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

67. The Commission tentatively concludes that it is in the public interest to revise certain aspects of the C and F block rules to encourage participation by small businesses while at the same time helping to ensure the best use of spectrum through the competitive bidding process.

68. *Reconfigure C Block Spectrum Size:* The Commission tentatively concludes it will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses. The Commission believes that by increasing the number of available licenses through this reconfiguration, taken together with the Commission's proposals to lift certain of our eligibility requirements, the Commission will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. The Commission also seeks comment on whether a different configuration would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular markets.

69. *Eliminate Eligibility Restrictions for Certain Licenses in Tiers:* The Commission proposes to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Based on the demand for spectrum to satisfy congestion, new technology and competitive needs, the Commission tentatively concludes that it would serve the public interest to make some additional spectrum available to all interested bidders. In light of the Commission's commitment to providing meaningful opportunities for entrepreneurs, the Commission seeks comment on proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions, which vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets. The Commission tentatively concludes that it will divide BTAs into two tiers according to population size of the BTA. ''Tier 1'' would comprise BTAs at and above a 2.5 million population threshold; ''Tier 2'' would comprise BTAs below that population threshold. For available 30 MHz C block licenses, the Commission tentatively concludes to allow ''open'' bidding for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. The Commission also seeks comment on whether there should be ''open'' bidding for all three of the 10 MHz licenses in Tier 1, and two of the three in Tier 2. With respect to available F block licenses, the Commission seeks comment on eliminating the eligibility requirements, or, alternatively, applying a tiered approach or retaining the existing eligibility rules. Finally, the Commission also tentatively concludes it will allow ''open'' bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold. These alternatives would affect the configuration and set-aside of spectrum. We seek comment on the impact of these alternatives on small businesses.

70. *Retain Current License Grouping for Bidding in Auction:* The Commission tentatively concludes to take bids on each license separately in Auction No. 35 on a simultaneous multiple round basis as the Commission has previously done in the past. The Commission believes that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time will provide carriers that have intense spectrum needs in a particular market the opportunity to compete for licenses as well.

71. *Grandfather Exception:* The Commission seeks comment on whether the grandfather eligibility exception should be revised or clarified. The Commission also tentatively concludes that upon the merger of two entities, each of which is eligible for the ''grandfather'' exception, the exception extends to the resulting entity; but that, upon the merger of two entities, only one of which is eligible for the ''grandfather'' exception, the exception does not extend to the resulting entity.

72. *Revise the Bidding Credits Available for Auction No. 35:* For those licenses that are not subject to eligibility restrictions, the Commission seeks comment on whether to increase bidding credits for small and very small businesses, and consortia thereof, to 25 and 40 percent, respectively, or to retain existing bidding credit levels. We expect that this departure from previous

procedure will provide small businesses with a meaningful opportunity to compete in an open auction.

73. *Alter the Transfer Requirements for Certain Licenses:* The Commission proposes to modify the Commission's transfer requirements to correspond to the Commission's proposed changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, the Commission tentatively concludes that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, the Commission seeks comment on a proposal that will allow a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by the rules. The Commission also seeks comment on whether it should evaluate a licensee's compliance with construction requirements on a system-wide basis.

74. *Eliminate the License Cap:* The Commission proposes to remove § 24.710 from the Commission's rules which prohibits an auction applicant from winning more than 98 C and F block licenses. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the Commission's proposal to reconfigure the available 30 MHz C block licenses would create additional C block licenses, while the Commission's proposal to eliminate the eligibility restrictions would increase the chances of C and F block licenses being won by a variety of entities.

75. *Retain the Spectrum Cap:* The Commission tentatively concludes that it should not grant the petitions seeking waiver of, or forbearance from, the CMRS spectrum cap rules and, accordingly, it would apply the spectrum cap to licenses of PCS C and F block spectrum to be auctioned in Auction 35. The Commission's proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary.

76. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that the proposals, alternatives, and tentative conclusions described in this Notice promote these goals while maintaining the fair and efficient execution of the auctions program. The Commission, therefore, seeks comment on all issues, proposals, tentative conclusions, and alternatives described in the Notice, and the impact they may have on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

77. None.

List of Subjects in 47 CFR Part 24

Communications common carriers, Personal communications services, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–14881 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter IV

[Docket: 000214043–0043–01]

RIN 1018–AF55, 0648–AL91

Announcement of Draft Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of draft policy.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (Services), announce a draft policy for the evaluation of conservation efforts when making listing decisions under the Endangered Species Act of 1973, as amended (Act). While the Act requires us to consider all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts contribute to making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.

DATES: Send your comments on the draft policy to us (see **ADDRESSES** section) by August 14, 2000.

ADDRESSES: Send your comments on the draft policy to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., (MS–420 ARLSQ), Washington, DC 20240, or to FW9_FWE_DTEFR@fws.gov. You may examine the comments we receive by appointment during normal business hours in Room 420, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service at the above address, telephone 703/358–2171 or facsimile 703/358–1735, or Wanda Cain, Chief, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, 13th Floor, Silver Spring, Maryland 20910, telephone 301/713–1401 or facsimile 301/713–0376.

SUPPLEMENTARY INFORMATION:

Draft Policy

Policy Purpose

We have proposed this policy in order to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. We have also proposed this policy to facilitate the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Policy Scope

This policy applies to our evaluation of all formalized conservation efforts when making listing decisions for species not listed, including findings on petitions to list species and decisions on whether to assign candidate status, to remove candidate status, to issue proposed listing rules, and to finalize or withdraw proposed listing rules. This policy applies to formal conservation efforts developed with or without a specific intent to influence a listing

decision and with or without the involvement of the Services. This policy identifies criteria we will use to evaluate the certainty of implementation and effectiveness of formalized conservation efforts that have not yet been implemented or have been recently implemented and have not yet demonstrated effectiveness at the time of a listing decision. The criteria will be used to determine whether a formalized conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered.

In many cases, conservation efforts affecting a particular species will have been implemented and will have shown results well before the time of a listing decision. In those cases, development of an agreement or plan, and an evaluation of its certainty of implementation and effectiveness, would not be necessary, because the results of the implemented conservation efforts will be considered when we make a listing decision.

The policy does not provide guidance for determining the level of conservation or the types of conservation efforts needed to make listing unnecessary. Also, the policy does not provide guidance for determining when parties should enter into agreements or when a conservation effort should be included in an agreement or plan. The policy provides guidance only for evaluating the certainty of implementation and effectiveness of formalized conservation efforts. Although the certainty of implementation and effectiveness of a conservation effort may be considered in determining the appropriateness of including the effort in an agreement or plan, no particular level of certainty must be provided in order to include the effort in an agreement or plan.

Definitions

''Adaptive management is the process of monitoring the results of implemented conservation efforts, then adjusting those efforts according to what was learned.

''Agreements and plans'' include conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals.

''Candidate species,'' as defined by regulations at 50 CFR 424.02(b), means any species being considered for listing as an endangered or a threatened species, but not yet the subject of a proposed rule. However, the FWS includes as candidate species those species for which the FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The NMFS includes as candidate species those species for which it has information indicating that listing may be warranted but for which sufficient information to support actual proposed listing rules may be lacking. The term ''candidate species'' used in this policy refers to those species designated as candidates by either of the Services.

''Conservation efforts,'' for the purpose of this policy, are specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions.

''Formalized conservation efforts'' are conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document.

Authority

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(a)(1)), states that we must determine whether a species is threatened or endangered because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; and

(E) Other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to ''tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.'' Read together, sections 4(a)(1) and 4(b)(1)(A) and our regulations at 50 CFR section 424.11(f) require us to consider any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (*i.e.*, efforts that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—''the inadequacy of existing regulatory mechanisms''—indicates that we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

In addition, we construe the analysis required under section 4(a)(1), in conjunction with the directive in section 4(b)(1)(A), to authorize and require us to consider whether the actions of any other entity, in addition to actions of State governments, create, exacerbate, reduce, or remove threats to the species. Factor (E) in particular —any ''manmade factors affecting [the species'] continued existence''— requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 requires us to consider any conservation efforts by State or local governments, Tribal governments, Federal agencies, businesses, organizations, or individuals that positively affect the species' status.

Conservation efforts are often informal, such as when a property owner implements conservation measures for a species simply because of concern for the species or interest in protecting its habitat, and without any specific intent to affect a listing decision. Conservation efforts are also often formalized in conservation agreements, conservation plans, management plans, or similar documents. The development and implementation of such agreements and plans have been an effective mechanism for conserving declining species and have, in some instances, made listing unnecessary. These efforts are consistent with the Act's finding that ''encouraging the States and other interested parties * * * to develop and maintain conservation programs. * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants' (16 U.S.C. 1531 (a)(5)).

In some situations, the listing process may be under way, and formalized conservation efforts have yet to be implemented. We may determine that a formalized conservation effort that has not yet been implemented reduces or removes a threat to a species when we have sufficient certainty that it will be implemented and effective.

Deciding or determining whether a species meets the definition of threatened or endangered requires us to make a prediction about the future persistence of a species. Central to this concept is a prediction of future

conditions, including consideration of future negative effects of anticipated human actions. We cannot protect species without taking into account future threats that have a high likelihood of affecting a species. The Act does not require that, and species conservation would be compromised if, we wait until a threat is actually harming individuals before we list the species as threatened or endangered. Similarly, the magnitude and/or severity of a threat may be reduced as a result of future positive human actions. Common to the consideration of both the effects of future negative human actions and the effects of future positive human actions is a determination of the certainty that the actions will occur and that their effects on the species will be realized. We therefore consider both future negative and future positive human impacts when assessing the status of the species.

For example, if a State recently instituted a program to eliminate collection of a reptile being considered for listing, we must assess the predicted consequences of this program on the status of the species. For those parts of the program recently instituted, a record to determine the effect on the species may not yet exist. Therefore, we must base an assessment of the adequacy of the program on predicted compliance and effects. Such an assessment would reasonably include an evaluation of the State's ability to enforce new regulations, educate the public, monitor compliance, and monitor the effects of the program on the species. We would determine that the program reduces the threat of overutilization of the species through collecting if we found sufficient certainty that the program would be implemented and effective.

The language of the Act supports this approach. The definitions for both ''endangered species'' and ''threatened species'' connote future status, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. In addition, the first factor in section 4(a)(1)—the present or threatened destruction, modification, or curtailment of [the species'] habitat or range—explicitly requires us to analyze both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range. However, future actions by Federal agencies, States, Tribes, and private entities that create, exacerbate, reduce, or remove threats are not limited to actions affecting a species' habitat or range. Congress did not intend for us to consider current and future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected by the language of the Act, to require us to consider both current actions that are affecting a species' status and sufficiently certain future actions—either positive or negative—that will affect habitat, range, overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors.

The consideration of both positive and negative effects of human actions in making a prediction about the future persistence of a species also requires consideration of voluntary human actions. The threats to species that lead to listing as threatened or endangered are often the result of voluntary human actions. For example, decisions to develop property, harvest timber, or otherwise use or manage land or other natural resources in ways that pose a threat to a species are typically voluntary, as opposed to mandatory, actions. We must factor the effects of these voluntary detrimental actions into our assessment. Similarly, decisions to forego development or other changes in land use or management that would pose a threat to a species, as well as decisions to initiate conservation efforts that will have a positive effect on the species, are often voluntary, as opposed to mandatory, actions. Voluntary beneficial actions, whether initiated independently or through participation in a formalized conservation effort, must also be factored into our assessment.

For example, a State could have a voluntary incentive program for protection and restoration of riparian habitat that includes providing technical and financial assistance for fencing to exclude livestock. To assess the effectiveness of this voluntary program, we would evaluate the level of participation (*e.g.*, number of participating landowners or number of stream-miles fenced), the length of the commitment by landowners, and effects of the program on the species. We would determine that the program reduces the threat of habitat loss and degradation if we find sufficient certainty that the program is effective.

Evaluation Criteria

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts (*i.e.,* actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to making listing a species as threatened or endangered unnecessary or contributes to forming a basis for listing as threatened rather than endangered, we must evaluate whether the conservation effort affects the status of the species. Two factors are key in that evaluation: (1) For those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) the certainty that the conservation effort will be effective. Because the certainty of implementation and effectiveness of formalized conservation efforts may vary, we will evaluate each effort individually. In order for us to determine that a formalized conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered, the conservation effort must meet the following criteria.

A. The certainty that the conservation effort will be implemented:

1. The conservation effort; the party(ies) to the agreement or plan that will implement the effort; and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.

2. The authority of the party(ies) to the agreement or plan to implement the conservation effort and the legal procedural requirements necessary to implement the effort are described.

3. Authorizations (*e.g.,* permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations is provided.

4. The level of voluntary participation (*e.g.,* by private landowners) necessary to implement the conservation effort is identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation is provided (*e.g.,* an explanation of why incentives to be provided are expected to result in the necessary level of voluntary participation).

5. All regulatory mechanisms (*e.g.,* laws, regulations, ordinances) necessary to implement the conservation effort are in place.

6. A high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding is provided.

7. An implementation schedule (including completion dates) for the conservation effort is provided.

8. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

1. The nature and extent of threats being addressed by the conservation effort are described.

2. Explicit objectives for the conservation effort and dates for achieving them are stated.

3. The steps necessary to implement the conservation effort are identified.

4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified.

5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided.

6. Principles of adaptive management are incorporated.

These criteria should not be considered comprehensive evaluation criteria. The certainty of implementation and effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and action-specific factors. We will consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

In addition, we will consider the estimated length of time that it will take for a formalized conservation effort to remove or reduce threats to the species. In some cases, the nature, severity, and/or imminence of threats to a species may be such that a conservation effort cannot be expected to remove or reduce threats quickly enough to make listing unnecessary.

An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered. To determine that a formalized conservation effort contributes to making listing a species as threatened or endangered unnecessary, or contributes to forming a basis for listing as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered.

Additional Considerations

Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals contemplating development of an agreement or plan should be aware that, because the Act mandates specific timeframes for making listing decisions, we cannot delay the listing process to allow additional time to complete the development of an agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing decision. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act, which would establish only those prohibitions necessary for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery and delisting.

In addition, we encourage the development of agreements or plans even if they do not meet the criteria listed in this policy. We hope that efforts contained in such plans would be implemented by the time we must make a listing decision. If efforts have been, or will be, implemented by the time we must make a listing decision, there is no need to provide certainty of implementation. However, prior to making a listing decision, we would evaluate the certainty of effectiveness of any newly implemented efforts.

If we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of a formalized conservation effort, we will monitor the status of the species and the progress in implementation of the conservation effort. If there is (1) A failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; or (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat, we will reevaluate the status of the species and consider whether initiating the listing process is necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule.

Public Comments Solicited

We request comments on four aspects of this notice: (1) The content of the draft policy; (2) other related issues; (3) the clarity of this notice; and (4) the collection of information from the public expected to be associated with preparation and submission of conservation agreements and plans and with monitoring and reporting the implementation progress and effectiveness of conservation efforts, which requires Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

Comments on the Content of the Draft Policy

We solicit your comments on the content of this draft policy. We are especially interested in your comments on the criteria that we will use to evaluate the certainty that a formalized conservation effort will be implemented. For example, must all regulatory mechanisms (*e.g.,* laws, regulations, ordinances) necessary to implement a conservation effort actually be in place in order for us to determine that the effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered? Or is it sufficient that the conservation effort include a high level of certainty that the regulatory mechanisms will be adopted by a specified date? Similarly, should funding, authorizations, and voluntary participation be in place at the time a conservation effort is evaluated, or is it sufficient that the conservation effort include a high level of certainty that they be in place by a specified date? In addition, how might an entity demonstrate a high level of certainty of implementation of a conservation effort? In determining a final action on this draft policy, we will take into consideration all comments we receive during the comment period.

Comments on Other Related Issues

Also, we are interested in your comments on the timing of the development of conservation agreements or plans. We encourage early development of conservation agreements or plans, prior to the need to propose a species for listing, such as at or before the time a species is placed

on the candidate list. However, agreements or plans often have been initiated or accelerated when one of the Services has proposed to list a species. Listing proposals generally provide a 60-day comment period. At the latest, we should receive conservation agreements or plans before the end of the comment period in order to be considered in a final listing decision. Beginning development of a conservation agreement or plan after the species is proposed for listing generally does not allow much time for implementation of any new conservation efforts identified as necessary in an agreement or plan. In that case, we must rely on our analysis of the certainty of implementation and effectiveness of those proposed efforts when making a listing decision. We hope that, by identifying specific criteria for evaluation of conservation efforts, this policy will encourage earlier development of conservation efforts such that many of the identified conservation efforts will be implemented by the time a final listing decision is made. Are there other ways to encourage earlier development of conservation efforts?

Clarity of the Policy

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this policy easier to understand, including answers to the following questions: (1) Is the discussion in the ''Supplementary Information'' section of the preamble helpful in understanding the policy? (2) Does the policy contain technical language or jargon that interferes with its clarity? (3) Does the format of the policy (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) What else could we do to make the policy easier to understand?

Send your comments concerning the content or clarity of this draft policy to the FWS (see **ADDRESSES** section).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3501 *et seq.*) requires Federal agencies to obtain OMB approval for certain collections of information from the public. We 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. Simultaneous to publication of this notice, we are requesting OMB approval for information collection associated with this draft policy. The OMB regulations implementing provisions of the Paperwork Reduction Act require agencies to provide interested members of the public and other affected agencies an opportunity to comment on agency information collection and recordkeeping activities (see 5 CFR 1320.11). Our request for approval from OMB for a collection of information from the public must include an estimate of the information collection and recordkeeping burden that would result from our draft policy if made final.

The development of a conservation agreement, conservation plan, management plan, or similar document by a State or other entity is completely voluntary. While this policy applies to formal conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services, only those agreements or plans developed to influence a listing decision, with the involvement of the Service, constitute a new information collection requiring OMB approval under the Paperwork Reduction Act. In addition, when a State or other entity develops such an agreement or plan with the specific intent of making listing of a species unnecessary, the criteria identified in our draft policy can be construed as requirements placed on the development of the agreement or plan. In other words, a State or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

In addition, one of the criteria identified in our draft policy is that a provision must be included that provides for monitoring and reporting the progress and results of implementation of a conservation effort. Conservation professionals have long considered monitoring and reporting to be an essential component of scientifically sound agreements and plans and routinely incorporate monitoring and reporting into these agreements and plans. We included a monitoring and reporting criterion in this policy to ensure consistency with sound biological and conservation principles and for completeness. Although monitoring and reporting provisions are already generally included in agreements and plans, this criterion also constitutes a new information collection requiring OMB approval under the Paperwork Reduction Act.

Estimating the amount of work associated with developing a conservation agreement or plan with the intent of making listing unnecessary and with monitoring and reporting the progress and results of implementation of conservation efforts is difficult because: (1) The development (and associated monitoring) of conservation efforts is completely voluntary, and we cannot predict who will decide to develop these efforts; (2) we cannot predict which species will become the subjects of conservation efforts and, therefore, cannot predict the nature and extent of conservation efforts and monitoring included in agreements and plans; and (3) many plans, such as agency land management plans, are developed to satisfy requirements of other laws or for other purposes, and we cannot predict whether, or the extent to which, some of these plans may be expanded to attempt to make listing unnecessary. For these reasons, we must base our estimate of the amount of work associated with developing conservation agreements or plans and monitoring and reporting of conservation efforts on information from conservation agreements developed in the past.

A. Fish and Wildlife Service

Since 1994, the FWS has entered into approximately 60 conservation agreements. About 14 of these agreements contributed to making listing the covered species as threatened or endangered unnecessary. Based on this information, we have entered into an average of about 15 agreements per year, 3 or 4 of which have made listing unnecessary. We expect that these averages will remain stable or increase. We will estimate that annually six agreements will be developed with the intent of making listing unnecessary, that four of these will be successful in making listing unnecessary, and, therefore, in four cases, the States or other entities who develop these agreements will carry through with their monitoring commitments in order to keep the covered species from being listed.

We estimate that each agreement developed with the intent of making listing unnecessary will require an average of 320 person-hours to complete. This estimate is a one-time burden for each plan developed. The burden to six States or other entities who choose to develop an agreement in a given year totals approximately 1,920 hours.

We estimate that, for each conservation effort, the State or other entity will spend annually an average of 160 person-hours to conduct the monitoring and 40 person-hours to prepare a report. Therefore, the annual burden to four States or other entities to

complete monitoring and reporting totals approximately 800 hours.

B. National Marine Fisheries Service

Since 1997, NMFS has entered into three conservation agreements, all of which we determined at the time contributed to making it unnecessary to list the covered species as threatened or endangered. We are assuming that at least one agreement will be developed annually with the intent of making listing unnecessary, and that about half of these will be successful in making listing unnecessary. We estimate that each agreement developed with the intent of making listing unnecessary will require an average of 320 person-hours to complete. This is a one-time burden for each plan developed. Therefore, the burden to one State or another entity that chooses to develop an agreement in a given year totals about 320 hours.

For each conservation effort, the State or other entity will spend an average of 160 hours to conduct the monitoring and 40 hours to prepare a report. Therefore, the annual burden to a State or another entity to complete monitoring and reporting totals about 200 hours. Over the next 3 to 5 years, we anticipate that two States or entities will have agreements in place that will require monitoring and reporting. Therefore, the monitoring and reporting requirement will total about 400 hours each year.

The Services will submit a request to OMB for approval of this collection of information concurrent with the proposed rulemaking action. We are also soliciting comments on this information collection approval request. We invite comments on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the information collection burden; (3) ways to enhance the quality, utility, and clarity of the information we would collect; and (4) ways to minimize the burden of the information collection on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send your comments on specific information collection requirements to the Desk Officer for the Interior Department and Commerce Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure consideration, you should submit your comments concerning information collection to OMB at the above address by July 13, 2000.

Economic Analysis

This draft policy will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This draft policy will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This draft policy will not raise novel legal or policy issues.

The Departments of the Interior and Commerce certify that this draft policy will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Services expect that this draft policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

This policy identifies criteria that a conservation effort must satisfy to ensure certainty of implementation and effectiveness and for the Services to determine that the conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. The Services developed this draft policy to ensure consistent and adequate evaluation of agreements and plans when making listing decisions and to help States and other entities develop agreements and plans that will be adequate to make listing species unnecessary.

The criteria in this policy primarily describe elements that are already included in conservation efforts and that constitute sound conservation planning. For example, the criteria requiring identification of responsible parties, obtaining required authorizations, establishment of objectives, and inclusion of an implementation schedule and monitoring provisions are essential for directing the implementation and affirming the effectiveness of conservation efforts. These kinds of ''planning'' requirements are generally already included in conservation efforts and do not establish any new implementation burdens. Rather, these requirements will help to ensure that conservation efforts are well planned and, therefore, increase the likelihood that conservation efforts will ultimately be successful in making listing species unnecessary.

The development of an agreement or plan by a State or other entity is completely voluntary. However, when a State or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing a species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans; the State or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

Other criteria require demonstrating certainty of implementation and effectiveness of conservation efforts. We have always considered the certainty of implementation and effectiveness of conservation efforts when making listing decisions. Although we have not had explicit evaluation criteria in the past, we believe the criteria in this policy are consistent with the requirements of the Endangered Species Act. Therefore, we believe that no economic effects on States and other entities will result from compliance with the criteria in this policy.

Furthermore, publication of this policy will have positive effects by informing States and other entities of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby helping States and other entities develop voluntary formalized conservation efforts that will be successful in making listing unnecessary. Therefore, we believe that informational benefits will result from issuing this policy. We believe these benefits, although important, will be insignificant economically.

Required Determinations

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The Services certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The Services expect that this draft policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts (see Discussion above).

b. This draft policy will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, this draft policy does not have significant takings implications. While State or local

governments may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as a result of this policy. This policy has no provision that would take private property rights.

Federalism. In accordance with Executive Order 13132, this draft policy does not have significant Federalism effects.

Civil Justice Reform. In accordance with Executive Order 12988, this draft policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the draft policy, requirements under section 4 of the Endangered Species Act will be clarified to entities that voluntarily develop formalized conservation efforts.

National Environmental Policy Act. We have analyzed this draft policy in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This draft policy does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the draft policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The National Oceanic and Atmospheric Administration (NOAA) has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216–6 Administrative Order, Environmental Review Procedure.

Section 7 Consultation. The Service has determined that issuance of this draft policy will not affect species listed as threatened or endangered under the Endangered Species Act, and, therefore, a section 7 consultation on this draft policy is not required.

Government-to-Government Relationship With Tribes. In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, this draft policy does not directly affect Tribal resources. The effect of this draft policy on Native American Tribes would be determined on a case-by-case basis with individual evaluations of formalized conservation efforts. Under Secretarial Order 3206, the Service will, at a minimum, share with the entity that developed the formalized conservation effort any information provided by the Tribes, through the public comment period or formal submissions, and advocate the incorporation of conservation efforts that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the formalized conservation effort and after careful consideration of the Tribe's concerns, the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Service's trust responsibility. Accordingly:

a. We have not yet consulted with the affected Tribe(s). This requirement will be addressed with individual evaluations of formalized conservation efforts.

b. We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed with individual evaluations of formalized conservation efforts.

c. We will consider Tribal views in individual evaluations of formalized conservation efforts.

d. We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this draft policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.

Dated: April 9, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14731 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for Petitions To List *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as Threatened or Endangered and Commencement of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding on two petitions to list *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as endangered or threatened species throughout their ranges under the Endangered Species Act of 1973, as amended (Act). We find that the petitions presented substantial information indicating that listing of both species may be warranted. We are initiating a status review to determine if listing of either or both species is warranted.

DATES: The finding announced in this document was made May 31, 2000. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by September 11, 2000.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the State Supervisor, Oregon State Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr. (see **ADDRESSES** section) (telephone 503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and we are to publish the finding promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the involved species and to disclose its findings within 12 months (12-month finding).

We received two separate formal petitions from the Rogue Group Sierra Club of Ashland, Oregon, both dated September 9, 1999, to list *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus ariduse ssp. ashlandensis* (Ashland lupine) as endangered or threatened throughout their ranges, and to designate critical habitat. Accompanying the petitions was supporting information relating to taxonomy, ecology, threats, and past and present distribution of *H. hendersonii* and *L. aridus* ssp. *ashlandensis*.

The processing of the petitions conforms with our Listing Priority Guidance published in the **Federal**

Register on October 22, 1999 (64 FR57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

Horkelia hendersonii, a member of the rose family, is a perennial, mat-forming, rhizomatous herb with several stems arising from a branching, woody crown, approximately 10–15 centimeters (cm) (3.9–5.9 inches (in.)) high. Leaves are silky, 4–6 cm (1.6–3.3 in.) long with 11–19 leaflets arranged pinnately. Flowers are white to pink with petals 4 millimeters (mm) (0.16 in.) long in a somewhat clustered terminal inflorescence. The species occurs in alpine areas between 1,829–2,286 meters (m) (6,000 to 7,500 feet (ft)) elevation, in habitat that includes open granitic gravels, alpine forblands, and dwarf shrublands.

Lupinus aridus ssp. *ashlandensis* is an erect perennial herb forming clumps 15–20 cm (5.9–7.9 in.) in diameter and 7–12 cm (2.8–4.7 in.) tall. The leaves are palmately compound with 5 to 7 leaflets that are up to 3 cm (1.2 in.) long. Leaves are numerous and crowded from the basal crown, with pubescent (downy) undersurfaces and glabrous (smooth) upper sides. Flowers are blue with petals 10–12 mm (0.39–0.47 in.) long. The banner is glabrous and the keel ciliate (fringed with hairlike processes) on the margin. *L. a.* ssp. *ashlandensis* grows on gravelly, granitic soils on the south to southwest slopes near the summit at elevations from 2,100 m (6,900 ft) to 2,280 m (7,480 ft). The lupine will not grow in dense brush.

Federal action on *Lupinus aridus* ssp. *ashlandensis* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *L. aridus* ssp. *ashlandensis* as threatened. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act, and our intention to review the status of the reported plant species.

Both *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* were included as category 2 candidates in a Notice of Review (NOR) published on December 15, 1980 (45 FR 82510). Category 2 formerly included species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. The plant NOR was again revised on September 27, 1985 (50 FR 39526). In this notice, *Horkelia hendersonii* and *L. aridus* ssp. *ashlandensis* remained category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184), which again included *H. hendersonii* as a category 2 candidate. However, *L. aridus* ssp. *ashlandensis* was upgraded to category 1 status. Category 1 candidates were formerly defined as species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of proposed rules was precluded by other listing activities of higher priority. On February 28, 1996, we published an NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. In response to the decision to discontinue the category 2 designation, *H. hendersonii* and other former category 2 candidates were not retained as candidates. In addition, *L. aridus* ssp. *ashlandensis* was dropped from the candidate list based on our interpretation of data supplied by the U.S. Forest Service (USFS) (Rolle 1993).

The petitions contained substantial amounts of information relating to the distribution of and threats to *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis*. Both species occur within about 1.6 kilometers (1 mile) of the summit on the western slope of Mt. Ashland, Oregon, on the Rogue River and Klamath National Forests. In addition, *H. hendersonii* is found in both National Forests, along the Siskiyou Crest in the Dutchman Peak-Jackson Gap area, at Observation Peak, and on and near McDonald Peak in Oregon, and at Dry Lake Lookout in the Klamath National Forest in California. *L. aridus* ssp. *ashlandensis* occurs as a single population on the top and western ridge of Mount Ashland. Time-series monitoring studies were started by the Forest Service in 1995, but the results are not available to us at this time (Kagan 1995). *Horkelia hendersonii* has been found in 16 habitat patches, but population trends are not known.

The petitions provided information regarding effects of habitat alteration and development activities on *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis*. According to the petitions, the Mount Ashland populations of both species are threatened by the expansion of the ski facilities, the communication facilities, and parking lot, road widening, and maintenance; development of a cross-country ski corridor; and erosion, compaction, and invasion of roadside weeds caused by off-road vehicle activities. The Mount Ashland Bowl patch of *H. hendersonii,* with 15 plants, is located on a proposed ski area expansion site (U.S. Department of Agriculture 1991). A proposed cross-country ski corridor would cut through a large portion of the eastern edge of the Mount Ashland habitat patch and could affect up to 5,000 individual *H. hendersonii* and up to 4,500 individual *L. aridus* ssp. *ashlandensis* (Kagan and Zika 1987a,b). In addition to the proposed ski area expansion, 8 individual *H. hendersonii* and 13 individual *L. aridus* ssp. *ashlandensis* are growing in areas of potential disturbance for the expansion of the U.S. Weather Bureau Radar Station (SRI International 1994, 1995). An existing four-wheel drive track, leading west from the summit access road at the first switchback, provides an avenue for the introduction of roadside weeds into the meadow and flat area that supports a sizeable population (4,900 plants) of *H. hendersonii* and a small population (350 plants) of *L. aridus* ssp. *ashlandensis* (Kagan and Zika 1987a,b; Zika 1987; Kagan 1995).

Although both species occur in open gravelly soils, including the gravelly margins of the access road, neither will colonize the compacted soils of existing roads (even if vehicle use was reduced or eliminated). Neither *H. hendersonii* nor *L. aridus* ssp. *ashlandensis* was found on the gravelly fill around the ski area lift towers or building, and both are apparently restricted to natural undisturbed substrates (Kagan and Zika 1987a,b; Zika 1987).

In the Dutchman Peak-Jackson Gap area, road maintenance and construction and widening of firebreaks threaten three of the habitat patches that support *Horkelia hendersonii*. Construction of firebreaks could also involve disturbance of the loose,

granitic gravels on the ridges where *H. hendersonii* grows.

Livestock grazing has been observed in *Horkelia hendersonii* habitat at Observation Peak, south of McDonald Peak, and at Dry Lake. Cattle cause damage by trampling, and, although we have no direct evidence that cattle find *H. hendersonii* particularly palatable, some damage from foraging has been seen (Kagan and Zika 1987a). On the most northern habitat patch on McDonald Peak, 100 *H. hendersonii* plants were found in 1985, but only 22 in 1987 (Kagan and Zika 1987a). No cause was presented for the reduction in numbers.

In 1963, the passage of the Oregon Wildflower Law (ORS 564.010–564.040) established protection for Oregon's natural botanical resources. The law was designed to protect showy plants, such as lilies, shooting stars, orchids, and rhododendrons, from collection by horticulturists interested in these species' domestication. The law prohibits the collection of wildflowers from within 61 meters (200 feet) of a State highway. Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. In addition, since there are no *Horkelia hendersonii* or *Lupinus aridus* ssp. *ashlandensis* populations close to State highways, this law provided very little protection for these species.

In 1987, Oregon Senate Bill 533 (ORS 564.100) was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. That bill, known as the Oregon Endangered Species Act (OESA), mandated responsibility for threatened and endangered plant species in Oregon to the Oregon Department of Agriculture (ODA). The OESA directs the ODA to maintain a strong program to conserve and protect native plant species threatened or endangered with extinction. Although the ODA is able to regulate the import, export, or trafficking of State-listed plant species (under ORS 564.120), their ability to protect plant populations is limited to State-owned or State-leased lands. *Lupinus aridus* ssp. *ashlandensis* is State-listed as endangered, receiving protection under OESA on State-managed lands. *Horkelia hendersonii* is a candidate for listing under OESA, but currently receives no protection on State-owned or State-leased lands. Currently, both species are considered sensitive species by the USFS, and may be afforded some protection during USFS project planning processes and implementation.

It is possible that *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* could be negatively affected by the expansion of brushfields and the establishment of trees onto open alpine on Mount Ashland due to fire suppression. The two species are not seen in dense herbaceous vegetation, brush, or the full shade of conifers (Zika 1987). The boundary of both populations on the southwest side of Mount Ashland corresponds closely to the brushfield boundary (Rolle 1993). Continued fragmentation of the populations by construction and widening of roads and other development can reduce genetic exchange between patches, reducing the viability of the populations.

Currently, we are working with the USFS to develop a conservation agreement for both species on Mount Ashland. The process was initiated in 1995 through a cooperative agreement with the Oregon Natural Heritage Program to develop conservation agreements for selected high-priority candidate species. On July 26, 1999, we provided a draft conservation agreement to the Klamath National Forest and Rogue River National Forest. The Rogue River National Forest is currently revising the draft conservation agreement to cover only Mount Ashland populations, but we have not received that draft for evaluation. If that draft conservation agreement is signed by all parties and implemented, it may remove some or all of the threats faced by *H. hendersonii* and *L. aridus* ssp. *ashlandensis* on Mount Ashland, but may not reduce threats faced by smaller, more isolated populations of *H. hendersonii* on McDonald Peak, an unnamed peak south of McDonald Peak, Dutchman's Peak, Observation Peak, and at Dry Lake Lookout.

We have reviewed the petitions, as well as other available information, including published and unpublished studies and reports, and agency files. Based on that information, we find that substantial information exists to indicate that listing of *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* as threatened or endangered throughout all of their ranges may be warranted. The petitions also requested designation of critical habitat for both species. However, designation of critical habitat is not petitionable under the Act. If the 12-month finding determines that listing *H. hendersonii* and *L. aridus* ssp. *ashlandensis* is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule.

Information Solicited

When we make a positive 90-day finding, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information on *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* concerning the following: (1) Historic and current distribution; (2) conditions in each habitat patch; (3) basic biology including age-frequency distribution of the population(s) in each habitat patch; (4) ongoing efforts to protect *H. hendersonii* and *L. aridus* ssp. *ashlandensis* and their habitat; and (5) threats to either species and their respective habitats in each occupied habitat patch. Section 4(b)(3)(B) of the Act requires that we make a finding within 1 year from the date the petitions were received as to whether listing *H. hendersonii* and *L. aridus* ssp. *ashlandensis* as threatened or endangered is warranted (12-month finding).

References Cited

Kagan, J. 1995. Monitoring of *Lupinus aridus* ssp. *ashlandensis*—general monitoring protocol and 1995 data. Unpublished report. 24 pp.

Kagan, J. and P. Zika. 1987a. Species management guide for *Horkelia hendersonii.* Unpublished report, Oregon Natural Heritage Data Base. 18 pp.

Kagan, J. and P. Zika. 1987b. Species management guide for *Lupinus aridus* ssp. *ashlandensis*. Unpublished report. Oregon Natural Heritage Data Base. 13 pp.

Rolle, W. 1993. Documentation, results, and population estimates for *Lupinus aridus* ssp. *ashlandensis*, based on a partial census in August and September 1991. Unpublished report. 6 pp.

SRI International. 1994. Mt. Ashland weather radar rare plant reassessment. Unpublished report. 5 pp.

SRI International. 1995. NEXRAD in-depth site survey report for the Medford, Oregon, area (existing site). Unpublished report. 5 pp.

United States Department of Agriculture. 1991. Final environmental impact statement, Mount Ashland Ski Area. Ashland Ranger District, Rogue River National Forest. 15 pp.

Zika, P. F. 1987. *Lupinus aridus ashlandensis* and *Horkelia hendersonii* field survey. Unpublished report. 13 pp. + maps.

Author: The primary author of this document is Dr. Andrew F. Robinson, Jr. (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 31, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–14497 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 65, No. 114

Tuesday, June 13, 2000

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

Rural Housing Service

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request an extension for a currently approved information collection in support of debt settlement of Community and Business Programs Loans.

DATES: Comments on this notice must be received by August 14, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For inquiries on the Information Collection Package, contact Tracy Gillin, Regulations and Paperwork Management Branch, (202) 692–0039. For program content, contact Joseph Ben-Israel, Senior Loan Specialist, Community Programs, RHS, USDA, 1400 Independence Ave. SW, Mail Stop 0787, Washington, DC 20250–0787, Telephone (202) 720–1490, E-mail *jbenisra@rdmail.rural.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 1956, subpart C Debt Settlement-Community and Business Programs.

OMB Number: 0575–0124.

Expiration Date of Approval: August 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community and Business Programs loans and grants are debt settled by this currently approved docket (0575–0124). The Community Facilities loan and grant program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents.

The Economic Opportunity Act of 1964, title 3 (Pub. L. 88–452), authorizes Economic Opportunity Cooperative loans to assist incorporated and unincorporated associations to provide low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Food Security Act of 1985, section 1323 (Pub. L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Business and Industry program is authorized by section 310 B (7 U.S.C. 1932) (Pub. L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control.

The Consolidated Farm and Rural Development Act, section 310 B(c) (7 U.S.C. 1932(c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, section 310 B(f)(i) (7 U.S.C. 1932(c)), authorized Rural Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural cooperative development.

The Farm Service Agency (FSA) is authorized by 25 U.S.C. sections 488–494, to make loans through its Indian tribal land loan program to individuals, tribes, or tribal corporations within tribal reservations and Alaskan communities. The authority for FSA to make loans for grazing, irrigation and drainage, and farm ownership recreation loans is provided by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 sections 330–381).

The purpose of the debt settlement function for the above programs is to provide the delinquent client with an equitable tool for the compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency. The information collected is similar to that required by a commercial lender in similar circumstances.

Information will be collected by the field offices from applicants, borrowers, consultants, lenders, and attorneys.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8.08 hours per response.

Respondents: Public bodies and nonprofit organizations.

Estimated Number of Respondents: 14.

Estimated Number of Responses per Respondent: 5.5.

Estimated Total Annual Burden on Respondents: 622 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, (202) 692–0039.

Comments

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 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 may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. 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.

Dated: May 24, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

Dated: May 10, 2000.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

Dated: May 23, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–14844 Filed 6–12–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1100]

Grant of Authority for Subzone Status; Imation Corporation (Data Storage Products); Tucson, Arizona

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 Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Tucson, grantee of Foreign-Trade Zone 174, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Tucson, Arizona (FTZ Docket 62–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67843, 12/3/99); and,

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 application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Tucson, Arizona (Subzone 174A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14899 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–2000]

Foreign-Trade Zone 50, Long Beach, California Area, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 50, requesting authority to expand its zone in the Long Beach, California area, within the Los Angeles/Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 5, 2000.

FTZ 50 was approved on September 14, 1979 (Board Order 147, 44 FR 55919, 9/28/79) and expanded 4 times (Board Orders 298, 341, 494 and 833). The zone project currently consists of the following sites in the Los Angeles/Long Beach Customs port of entry area: Site 1: Parcel 1–A (4 acres), 1500 West Dominguez Street, Long Beach; Parcel 1–B (96,354 sq. ft.), 909 East Colon Street, Wilmington; Parcel 1–C (2 acres), 1241 Watson Center Road, Carson; and Parcel 1–D (4 acres), 22941 South Wilmington Avenue, Carson; Site 2 (1,844 acres)—California Commerce Center, Ontario; Site 3 (92 acres)—parcels within the Inter-City Commuter Station Redevelopment area in Santa Ana and two warehouse facilities (17 acres, 324,000 sq. ft. total) at 3000/3100 Segerstrom Avenue, and 2900/2930 South Fairview Street, within the South Harbor Development area, Santa Ana; Site 4 (175 acres)—within the 2,300-acre San Bernardino International Airport and Trade Center complex (formerly Norton Air Force Base) in San Bernardino; and, Temporary Site 5 (11 acres, two parcels)—1101 W. McKinley Avenue (6 acres, Bldgs. 4–8) within the 487-acre Fairplex Center, Pomona; and, 10501–10509 E. Valley Blvd. (5 acres) at Pacific Place/San Gabriel Valley Business and Trade Center, El Monte, CA.

The applicant is now requesting authority to expand the general-purpose zone to include on a permanent basis the area within Temporary Site 5 (expires 9/1/01) and to include two new sites in the San Gabriel Valley area: Proposed Site 6: (50 acres)—former General Dynamics/Hughes site, north of Mission Boulevard between Humane Way and Dudley Street, Pomona; and, Proposed Site 7 (3 acres—2 sites)—San Gabriel sites, extending along San Marino Avenue and bounded on the north and south by Broadway and Clary Avenues (1 acre) and a site (2 acres) at Santa Anita and Junipero Serra Streets, San Gabriel. Proposed Site 6 is owned by the Pomona Redevelopment Agency and two private owners and Proposed Site 7 has multiple owners. The San Gabriel Valley Economic Partnership will serve as operator of the proposed sites. No specific manufacturing requests are being made at this time. Such 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.

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 August 14, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 28, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 350 S. Figueroa Street, Suite 509, Los Angeles, CA 90071.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: June 6, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14895 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1101]

Grant of Authority for Subzone Status; Imation Corporation (Data Storage Products); Camarillo, CA

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 Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Oxnard Harbor District, grantee of Foreign-Trade Zone 205, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Camarillo, California (FTZ Docket 63–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67844, 12/3/99); and,

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 application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Camarillo, California (Subzone 205A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14900 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2000]

Foreign-Trade Zone 93—Raleigh/Durham, NC; Application for Subzone Status, Pergo, Inc., Plant (Laminate—Particle Board Flooring); Garner, North Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the laminate-particle board flooring manufacturing plant of Pergo, Inc. (a subsidiary of Perstorp AB, of Sweden), located in Garner, North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 5, 2000.

The Pergo plant (102 acres/130,000 sq. ft.) is located within the Greenfield Industrial Park at 2000 Perstorp Parkway, Garner (Wake County), North Carolina, some 20 miles southeast of Raleigh. The facility (275 employees) is used to produce laminate-particle board flooring (HTSUS# 4410.19.0020), and to distribute foreign-made laminate flooring products with a particle board, paperboard, plastic, or other inorganic core for export and the U.S. market. The production process involves combining decorative plastic laminate and backing paper to particle board, which is then milled into tiles or planks. The completed flooring is then combined with moldings, glue and installation accessories to be shipped as a completed flooring system. The application indicates that additional laminate floor covering products may be produced with tileboard, paperboard, and/or polyurethane sheet in the future. Foreign-origin components used in manufacturing (currently 100%) include: sealants/adhesives/glue, fiberboard, particle board, decorative plastic laminate; and, backing paper and laminate. Additional foreign-sourced materials and components to be distributed with the completed laminate flooring include: Glues/sealants/caulking, installation kits, hand tools, cleaning kits; and, molding and trim of plastic, fiberboard and aluminum (duty rate range: free—6.0%).

FTZ procedures would exempt Pergo from Customs duty payments on the foreign materials and components used in export production. On its domestic sales of the manufactured flooring, the company would be able to choose the duty rate that applies to finished laminate-particle board flooring (duty free as particle board under 4410.19.0020) for the decorative plastic laminate raw material noted above. Pergo would be able to defer Customs duty payments on the foreign-origin finished flooring products and related materials that would be admitted to the proposed subzone for U.S. distribution. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 28, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service—Raleigh/Durham, Suite 500, 120 South Center Court, Morrisville, NC 27560

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Constitution Avenue, NW., Washington, DC 20230–0002

Dated: June 5, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14896 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1099]

Grant of Authority for Subzone Status Imation Corporation (Data Storage Products); Wahpeton, North Dakota

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 Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Grand Forks Regional Airport Authority, grantee of Foreign-Trade Zone 103, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Wahpeton, North Dakota (FTZ Docket 61–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67845, 12/3/99); and,

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 application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Wahpeton, North Dakota (Subzone 103A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14898 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1098]

Grant of Authority for Subzone Status; Imation Enterprises Corporation (Data Storage Products); Weatherford, Oklahoma

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 Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port Authority of the Greater Oklahoma City Area, grantee of Foreign-Trade Zone 106, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Enterprises Corporation, located in Weatherford, Oklahoma (FTZ Docket 60–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67845, 12/3/99); and,

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 application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Enterprises Corporation, located in Weatherford, Oklahoma (Subzone 106C), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14897 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602; C–508–605]

Revocation of Antidumping Duty Order: Industrial Phosphoric Acid From Belgium; and Revocation Countervailing Duty Order: Industrial Phosphoric Acid From Israel

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

ACTION: Notice of revocation of antidumping duty order: industrial phosphoric acid from Belgium; and revocation countervailing duty order: industrial phosphoric acid from Israel.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 35395 (June 2, 2000)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce (''the Department'') is revoking the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation is January 1, 2000.

DATES: Effective Date: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Meader, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW,

Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

Background

March 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 9970 and 64 FR 10017, respectively) of the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel, pursuant to section 751(c) of the Act. As a result of the reviews, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. [1] In addition, the Department determined that revocation of the countervailing duty order would likely lead to continuation or recurrence of countervailable subsidies and notified the Commission of the net countervailable subsidies likely to prevail were the order revoked. [2]

On May 22, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (See USITC Publication 3302, Investigations Nos. 701–TA–286 (Review) and 731–TA–365 (Review) (May 2000) and Industrial Phosphoric Acid from Israel and Belgium, 65 FR 35395 (June 2, 2000).)

Scope of the Orders

The merchandise subject to this antidumping duty order is industrial phosphoric acid (''IPA'') from Belgium and Israel. IPA is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of these antidumping and countervailing duty orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), this revocation is effective on January 1, 2000.

The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposits rate and to refund with interest any cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: June 7, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14893 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Final Results of Full Sunset Review: Industrial Phosphoric Acid From Belgium, 65 FR 3661 (January 24, 2000).

[2] See Final Results of Full Sunset Review: Industrial Phosphoric Acid From Israel, 65 FR 6163 (February 8, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 8, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. This review covers one producer/exporter, the Borusan Group, during the period May 1, 1998, through April 30, 1999.

Based on our analysis of comments received, we have made changes in the margin calculations. Although the exact weighted-average dumping margin in the final results has changed, it remains *de minimis* as in the preliminary results. *See* the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The 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 (April 1999).

Background

On February 8, 2000, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey,* 65 FR 6159 (*Preliminary Results*). We invited parties to comment on the Preliminary Results. The Borusan Group (Borusan), the sole respondent in this review, submitted a case brief on March 9, 2000. No other party filed a case brief or rebuttal brief. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications.

Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe application. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

Borusan made only two comments regarding the Preliminary Results. As stated above no other party commented on the decision. In its first comment, Borusan points out that the wrong exchange rates were used in the preliminary results margin calculation. We discuss this below in the ''Changes Since the Preliminary Results'' section. In its second comment, Borusan asked that the Department indicate in the final results and the subsequent cash deposit instructions issued to Customs that two pipe producers, Mannesmann Boru and Kartal Boru, are part of the Borusan Group. The Department notes that these affiliations are well established by the record of the review and have never been disputed by the Department or any interested party. We will ensure that Customs is notified accordingly in the cash deposit instructions. Because these issues do not require extensive discussion, we have not issued a separate decision memorandum to accompany these final results of the review.

Sales Below Cost in the Home Market

The Department disregarded Borusan's home-market below-cost sales which failed the cost test in these final results of review.

Changes Since the Preliminary Results

In its case brief, Borusan pointed out a clerical error resulting in the use of the wrong set of Turkish lira exchange rates in the margin calculation for the preliminary results. We agree with Borusan. For these final results, we have applied the exchange rates which we had stated we would use in the preliminary results.

Final Results of Review

As a result of our correction of the clerical error, we determine a final weighted-average margin of 0.38 percent for Borusan for the period May 1, 1998, through April 30, 1999.

The Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. We have calculated an exporter/customer-specific assessment value for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity sold.

Cash-Deposit Requirements

The following deposit requirement shall be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipe and tube from Turkey, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the Borusan Group is zero based on a weighted-average margin rate for Borusan of 0.38 percent, which is de minimis within the meaning of 19 CFR 351.106(c); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 14.74 percent, the ''all others'' rate established in the LTFV investigation.

The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during 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 notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 7, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14892 Filed 6–12–00; 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, DC 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, NW, Washington, DC.

Docket Number: 00–012. *Applicant:* Washington University, Department of Anesthesiology Research Unit, 660 S. Euclid, Campus Box 8054, St. Louis, MO 63110. *Instrument:* XY Shifting Table, Model 240 with Accessories. *Manufacturer:* Luigs and Neuman, Germany. *Intended Use:* The instrument is intended to be used to search neurons and synapses to determine the electrical properties of a synapse in the auditory system in the rat. *Application accepted by Commissioner of Customs:* April 21, 2000.

Docket Number: 00–014. *Applicant:* Washington University, Department of Anesthesiology Research Unit, 660 S. Euclid, Campus Box 8054, St. Louis, MO 63110. *Instrument:* XY Shifting Table, Model 240 with Accessories. *Manufacturer:* Luigs and Neuman, Germany. *Intended Use:* The instrument is intended to be used to search neurons and synapses to determine the electrical properties of a synapse in the auditory system in the rat. *Application accepted by Commissioner of Customs:* May 15, 2000.

Docket Number: 00–015. *Applicant:* University of California, San Diego, Department of Neurosciences, 9500 Gilman Drive, La Jolla, CA 92093–0608. *Instrument:* Electron Microscope, Model JEM–3100. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used for electron microscopic studies of cells and tissues from a variety of biological specimens used in biomedical and basic biology experiments. Specifically, the instrument will be used to determine 3D structure of cells and tissues in relatively thick sections using the technique of energy filtering microscopy and electron tomography. In addition, the instrument will be used for educational purposes in the course ''Introduction to Light and Electron Microscopy.'' *Application accepted by Commissioner of Customs:* March 19, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–14894 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000531162–0168–02; I.D. 040400B]

RIN 0648–AN49

New England Fishery Management Council; Notice and Request for Sea Scallop Research Proposals

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

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS issues this document to describe how you, the researcher, may be selected to perform sea scallop research projects funded by a 1-percent set aside of the scallop total allowable catch (TAC) under Framework Adjustment 13 to the New England Fishery Management Council's (Council's) Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 34 to the Council's Northeast Multispecies FMP (Frameworks 13/34) and how NOAA and the Council will determine whether to select your proposal. Framework 13/34 proposes to allow scallop vessels temporary access to the groundfish closed areas on Georges Bank and Nantucket Shoals to harvest sea scallops and will allow selected vessels to land scallops in excess of the trip limit or take additional trips and use the proceeds of the catch or additional trips to offset the costs of the research proposals submitted in response to this notification. Pending approval by NOAA, certain scallop vessels during the 2000 scallop fishing year will be allowed in Closed Area II, the Nantucket Lightship Area, and Closed Area I for periods of time to be specified in the final rule implementing the framework action. Frameworks 13 and 34, if approved by NOAA, would allow for three trips per vessel in Closed Area II, one trip per vessel in the Nantucket Lightship Area, and two trips per vessel in Closed Area I, unless modified by action taken by the Regional Administrator, Northeast Region, NMFS (Regional Administrator).

In anticipation of final approval of these framework adjustments, NOAA, in cooperation with the Council, is soliciting proposals for sea scallop research activities. Vessels participating in an approved project and fishing in the closed areas would be authorized by the Regional Administrator to take additional trips into the closed areas and/or to land scallops in excess of the 10,000-lb (4,536-kg) trip limit allowed for all closed area trips.

DATES: All research proposals to be conducted with TAC set aside funds from Closed Area II must be received between June 13, 2000 and no later than 5:00 p.m., local time, on June 28, 2000, in the office listed in the **ADDRESSES** section of this document. Postmarks will not be sufficient. Facsimile applications will not be accepted.

For further information related to the timeframe for review and selection of proposals to be conducted with TAC set aside funds from Closed Area II and for information related to the TAC set aside for research proposals for Closed Area I and the Nantucket Lightship Closed Area, see Section A, Background, under **SUPPLEMENTARY INFORMATION** of this document.

ADDRESSES: Proposals must be submitted to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Marked ''Attention—Sea Scallop Research Proposals.''

FOR FURTHER INFORMATION CONTACT: Patricia M. Fiorelli, New England Fishery Management Council, (978) 465–0492 or David Gouveia, National Marine Fisheries Service, (978) 281–9280.

SUPPLEMENTARY INFORMATION:

A. Background

All research proposals to be conducted with TAC set aside funds from Closed Area II must be received during the period identified in the DATES section of this document. Prior to selection, applications may be reviewed and evaluated by the Council at the request of NOAA and become subject to public review as part of an open public comment process at the Council meeting. If it is determined that the Council should evaluate the proposals in a public meeting, the Council anticipates that the review will occur on or about June 30, 2000. Subsequently, the Council will provide its recommendations to NOAA no later than July 7, 2000. Researchers may submit proposals for sea scallop research to be conducted with TAC set-aside funds from the Nantucket Lightship Closed Area and Closed Area I during the June 13, 2000 to June 28, 2000 submission period; however, a second Request for Proposal will be published in the **Federal Register** concerning the harvest of research set aside scallops from these areas at a later date. All proposals received for TAC set-aside funds from the Nantucket Lightship Closed Area and Closed Area I will be kept on file and reviewed against other proposals received as a result of a future notice. Researchers may amend proposals submitted under this notice for TAC set-aside funds from the Nantucket Lightship Closed Area and Closed Area I during the request for proposal period specified in a future notice.

The TAC set-aside for sea scallop research would total 191,000 lb (86,637.6 kg) of scallops and have an estimated value of $955,000. The TAC for the sea scallop research by area would be as follows: Closed Area II, 66,000 lb (29,937.6 kg); the Nantucket Lightship Area, 55,000 lb (24,948 kg); and Closed Area I, 70,000 lb (31,752 kg).

B. Authority

Issuing grants is consistent with §§ 402(e), 303(b)(11), 304(e), and 404(c)

of the Magnuson-Stevens Fishery Conservation and Management Act.

C. Catalog of Federal Domestic Assistance (CFDA)

11.454, Unallied Management Projects

D. Funding Instrument and Project Period

We will award a grant through the NOAA grant award process to successful applicants. The project period for sea scallop research is June 15, 2000, through June 15, 2001.

E. Funding Availability

No Federal funds are provided for sea scallop research under this notification. The Federal Government's contribution to the project will be a Letter of Authorization that will provide special fishing privileges in response to sea scallop research proposals selected to participate in this program. The Federal Government shall not be liable for any costs incurred in the conduct of the project. The funds generated from the additional landings authorized in the Letter of Authorization shall be used to cover the cost of the sea scallop research, including vessel costs, and to compensate vessel owners for expenses incurred. Therefore, the owner of each fishing vessel selected to land scallops in excess of the trip limit or from additional authorized trips must use the proceeds of the sale of the excess catch to compensate the researcher for costs associated with the research activities and use of the vessel. Any additional funds above the cost of the research activities (or excess program income) shall be retained by the vessel owner as compensation for the use of his/her vessel.

F. Scope of Sea Scallop Research

Projects funded under the sea scallop TAC set aside program should enhance understanding of the scallop resource or contribute to the body of information on which management decisions are made. Sea scallop research may be conducted in or outside of a closed area, within or outside of the Sea Scallop Exemption Program timeframe, and onboard a fishing or other type of vessel. Sea scallop research conducted with these TAC set-aside funds also may or may not involve the harvest of scallops.

Funds generated from the set-aside landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of set-aside scallops. For example, they could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists) or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner should the sale of the excess catch not fully reimburse the researcher or vessel owner for their expenses.

G. Eligibility Criteria

All for-profit and non-profit institutions; state, local or tribal governments; educational institutions; institutions of higher education; and individuals are eligible to apply provided that all proposal requirements are satisfied and the proposal is received by the date specified in this notice.

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSIs) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

H. Proposal Requirements

Proposals must be submitted to NOAA and must identify the sea scallop research to be conducted and the total amount of scallops requested for the project, including their approximate cash value. Additionally, each proposal must identify the requirements for the participating vessel(s) that would make a closed area trip to collect the scallop set aside. The vessel selected by the applicant should be listed in the proposal, if possible, or specifically identified prior to final approval by NOAA. Proposals may request that the scallop set-aside be collected separately from the sea scallop research trip or other related research trip. The separate sea scallop research compensation trips do not necessarily have to be conducted by the same vessel. The Council or NMFS contact person may provide assistance to researchers who are seeking vessels to participate in the collection of set aside scallops or directly in research projects. The Council or NMFS may publish a list of those vessel owners willing to participate through their respective homepages.

The researcher's proposal must state the amount of funds required to support the research project, as well as the amount required to compensate the vessel owner either for the collection of set aside scallops or for participation in the research project, or both. The proposal must also include the agreement between the vessel owner and researcher that shows exactly how the research activity is to be paid for, if possible, or provided prior to final approval by NOAA.

I. Project Evaluation and Approval

As stated earlier, applications may be reviewed and evaluated by the Council at the request of NOAA and become subject to public review as part of an open public comment process at the Council meeting. In the event that an application contains information or data which the applicant does not want disclosed prior to award for purposes other than the evaluation of the application, the applicant should mark each page containing such information or data with the words

''Privileged Information/Confidential/Commercial or Financial Information—Limited Use'' at the top of the page to assist NOAA in making disclosure determinations when submitting information to the Council for review. DOC regulations implementing the Freedom of Information Act (FOIA) are found at 15 CFR Part 4, ''Public Information,'' which sets forth rules for DOC to make requested materials, information, and records publicly available under the FOIA. To the extent permitted under the FOIA, the contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests.

J. Project Funding Priorities

Sea scallop research projects that identify and evaluate gear to reduce groundfish bycatch and habitat impacts and that provide improved information concerning scallop abundance estimates are considered high priority by the Council. Sea scallop research that involves evaluating the distribution, size composition, and density of scallops in the closed areas prior to the open periods also will be considered high priority. Other research needs are described in this section (not listed in order of priority) and also will be considered by the Council and NOAA.

1. Evaluation of ways to control predation on scallops;

2. Sea scallop research to actively manage spat collection and seeding;
3. Social and economic impacts and consequences of closing areas to enhance productivity and improve yield for scallops and other species;
4. High resolution surveys that include distribution, recruitment, mortality and growth rate information;
5. Estimation of factors affecting fishing power for each limited access vessel;
6. Demonstration projects to identify ways to reduce discard mortality, increase efficiency without increasing fishing power (e.g., decreasing processing time with sorters) and improve safety;
7. Sea scallop research to identify scallop habitat and ecological relationships that affect reproduction, recruitment mortality and growth, including those enhanced/impeded by area closures;
8. Quantification of fishing costs related to fishing in specific areas (e.g., fishing gear modification, steaming time, and opportunity cost);
9. Experimental designs with control areas using alternative management strategies, such as area licensing and rotational closures (projects should include an analysis of yield improvement, habitat impacts and social impacts, including conflict resolution across fisheries);
10. Identification of fishermen's perceptions about area-based management and alternative strategies;
11. Processing and analyzing of data that will be collected or that have already been collected;
12. Broader investigations of variability in dredging efficiency across habitats (substrates, current velocities, etc.) times, areas, and gear designs; and
13. Sea scallop research that provides more detailed scallop life history information (especially on age-and-area specific natural mortality and growth) and to identify stock-recruitment relationships.

K. Evaluation Criteria

Independent technical experts may be asked to participate in the evaluation process. Proposals will be evaluated based on the assigned score for each of the following criteria:
1. A clear definition of the problem, need, issue or hypothesis to be addressed (10 points);
2. A clear definition of the approach to be used, including theoretical studies, laboratory analyses, and/or field work (15 points);
3. Adequate justification as to how the project is likely to achieve its stated objectives (20 points);
4. Identification of anticipated benefits, potential users and methods of disseminating results (10 points);
5. Relevance of the project to the research needs identified by the Council (20 points);
6. Demonstration of support, cooperation and/or collaboration with the fishing industry (15 points); and
7. Cost-effectiveness of the project (10 points).

L. Selection Procedures

If the Council participates in the selection process, the Council's Research Steering Committee will evaluate each research proposal based on the criteria identified in this notification and make recommendations for selection to the Council. The Council will then make its recommendations to the Regional Administrator based on the Research Steering Committee recommendations. NOAA must then consider the Council's recommendations, provide final approval of the projects and authorize selected vessel(s) to exceed the possession limit, take additional trips or be exempt from other regulations specified in the Sea Scallop FMP through written notification to the applicant. Because NOAA will take into account program policy factors such as time of year the research activities are to be conducted, administrative functions including evaluations of proposals through the Experimental Fishery Procedures contained in 50 CFR 600.745 and 648.12, and logistic concerns, projects may not be selected in the order recommended by the Council.

If the Council does not participate in the evaluation of the proposals, NOAA will convene a review panel to evaluate the proposals using the same criteria and scoring process. Based on the recommendation of the members of this panel and program policy factors identified in this notification, NOAA would provide final approval and authorize vessels to participate in the sea scallop research projects. All sea scallop research must be conducted in accordance with provisions approved by NOAA and provided in a Letter of Authorization issued by NMFS.

M. Proposal Format

Proposals should be limited to 6 pages, excluding item 5. The format may vary but must include:
1. A project summary;
2. A narrative project description to include: (a) Project goals and objectives; (b) the relationship of the proposed project to management needs or priorities identified by the New England Fishery Management Council; (c) a statement of work (project design and management—who is responsible, expected products, participants other than applicant); and (d) a summary of the existing state of knowledge related to project and contribution and relevance of the proposed work;
3. A description of all funding sources (including revenues derived from the sale of scallops harvested under the research TAC set aside) and funding needs; this element of the proposal must include the amount of scallop TAC set aside requested and the expected funds to be generated by the sale of those scallops; also the expected percentage of funds to be allocated to the researcher and any involved fishing vessel;
4. A budget that includes a breakdown of costs (permit costs, equipment, supplies, overhead); applicants must submit a Standard Form 424 ''Application for Federal Assistance'' including a detailed budget using Standard Form 424A, ''Budget Information— Non-Construction Programs,'' Standard Form 424B, ''Assurances—Non-Construction Programs,'' and Commerce Department Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters: Drug Free Workplace Requirements and Lobbying.'' Copies of these Standard Forms may be found on the Internet in a PDF (Portable Document Format) version at http://www.whitehouse.gov/OMB/grants/index.html under the title ''Grants Management Forms,'' or by contacting the New England Fishery Management Council office; and
5. Supporting documents (resumes, cooperative research agreements, contracts, etc.).

N. Final Reports

NOAA or the Council will require project researchers to submit an interim and/or final report describing their research project results, or other acceptable deliverable(s), in a timeframe that is specific to the type of research conducted. The format of the final report may vary, but must contain:
1. A brief summary of the final report;
2. A description of the issue/problem that was addressed;
3. A detailed description of methods of data collection and analyses;
4. A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; this should include benefits and/or contributions to management decision-making;
5. A list of entities, firms or organizations that actually performed

the work and a description of how that was accomplished; and

6. A detailed final accounting of all funds used to conduct sea scallop research, and including those provided through the research set-aside. The financial information must be submitted on Office of Management and Budget Standard Form-269. Copies of this Standard Form may be found on the Internet in a PDF (Portable Document Format) version at http://www.whitehouse.gov/OMB/grants/index.html under the title AGrants Management Forms,@ or by contacting the New England Fishery Management Council office.

O. Other Requirements

Evaluations of the impacts of sea scallop research, which involve exemptions to the current fishing regulations, other than those stated in Sea Scallop FMP, will be made by NMFS. Vessels conducting certain types of sea scallop research requiring relief from fishery regulations may be required to obtain an Exempted Fishing Permit (EFP). To apply for an EFP, interested parties must submit an application to NMFS at least 60 days before the effective date of the EFP. Additional time could be necessary for NMFS to make a determination about the need for an Environmental Assessment. If required, preparation of this document may be the responsibility of the researcher.

P. Other Requirements of Recipients

1. Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Past Performance

Unsatisfactory performance under prior Federal awards may result in a proposal not being selected.

3. Delinquent Federal Debt

A proposal submitted by an applicant who has an outstanding delinquent Federal debt is not eligible for selection until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to DOC are made.

4. Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

5. Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

i. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

ii. Drug-Free Workplace. Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

iii. Anti-Lobbying. Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

iv. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

6. Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

7. False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. Preaward Activities

If you incur any costs prior to receiving an award agreement signed by an authorized NOAA official, you do so solely at your own risk of these costs not being included under the award. Notwithstanding any verbal or written assurance that you may have received, preaward costs are not allowed under the award unless the grants officer approves them in accordance with 15 CFR 14.28.

9. Future Awards

If we select your application to perform sea scallop research to be conducted with the scallop TAC set aside, we have no obligation to provide any additional TAC set-aside obligations in connection with that award.

Classification

Prior notice and opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 533, or any other law, was not required for this action, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

This document contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The standard application forms have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043 and 0348–0044. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection displays a currently valid OMB control number.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

This action has been determined to be not significant for purposes of E.O. 12866.

Dated: June 7, 2000.

William Fox,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14856 Filed 6–8–00; 2:59 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Submission for OMB Review; Comment Request Entitled Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractors' Purchasing Systems Reviews. A request for public comments was published at 65 FR 17490, April 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 13, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.
Responses Per Respondent: 1.
Total Responses: 1,580.
Average Burden Per Response: 17.
Total Burden Hours: 26,860.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–5997. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: June 8, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–14877 Filed 6–12–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of Navy.

U.S. Patent Application Serial No. 09/563,740 entitled, ''ELECTRONIC DEVICES WITH DIFFUSION BARRIER AND PROCESS FOR MAKING SAME,'' filing date: May 3, 2000, Navy Case No. 82111.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgre, VA 22448–5100, telephone (540) 653–8016.

Authority: 35 U.S.C. 207, 37 CFR Part 404

Dated: May 31, 2000.

J.L. Roth,

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

[FR Doc. 00–14811 Filed 6–12–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 2000.

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, Regulatory Information Management, 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 7, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: New American High Schools Study—Phase I Activities.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 32; Burden Hours: 144.

Abstract: The New American High Schools (NAHS) Study is a longitudinal research project. The overall goal of this effort is to document the practices and outcomes of a group of high schools engaged in whole-school improvement efforts in order to inform both policy debate and improve secondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@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. 00–14826 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 2000.

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, Regulatory Information Management, 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 7, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Mapping Federal Funding to High Schools.

Frequency: One time.

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

Reporting and Recordkeeping Hour Burden: Responses: 732; Burden Hours: 3,499.

Abstract: The Mapping Federal Funding to High Schools study will attempt to (1) ascertain the percentage of federal funds channeled to high schools; (2) identify specific high schools receiving federal funds; and (3) assess the utilization of the funds by high schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@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. 00–14827 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies whose applications to the

Secretary for initial or renewed recognition will be reviewed at the Advisory Committee meeting to be held on December 11–13, 2000. The notice also invites written comments on agencies submitting interim reports that will be reviewed at the December meeting.

Where Should I Submit My Comments?

Please submit your written comments by July 28, 2000 to Karen Kershenstein, Director, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, 1990 K Street, NW, 7th Floor, Room 7105, Washington, DC 20006–8509, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity to Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR Part 602 (for accrediting agencies) and in 34 CFR Part 603 (for State approval agencies).

We will also include your comments in the staff analyses we present to the Advisory Committee at its December 2000 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by July 28, 2000. In all instances, your comments about agencies seeking initial or continued recognition must relate to the Criteria for the Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline as complaints. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate. We will also notify the commentors of the disposition of those comments.

What Agencies Are on the Agenda for the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the December 2000 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Midwifery Education Accreditation Commission (Requested scope of recognition: the accreditation and preaccreditation of direct-entry (non-nurse) midwifery certificate and undergraduate and graduate degree educational programs and institutions offering those types of programs)

2. Teacher Education Accreditation Council (Requested scope of recognition: the accreditation of professional education programs in institutions offering baccalaureate and graduate degrees for the preparation of teachers and other professional personnel for elementary and secondary schools)

Petitions for Renewal of Recognition

1. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education (Current scope of recognition: the accreditation of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels. Requested scope of recognition: the current scope of recognition plus the preaccreditation of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels [''Candidacy''] of programs)

2. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (Requested scope of recognition: the accreditation of programs in legal education that lead to the first professional degree in law, as well as freestanding law schools offering such programs)

3. Accreditation Commission for Acupuncture and Oriental Medicine (Requested scope of recognition: the accreditation of first-professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine)

4. Accrediting Commission on Education for Health Services Administration (Requested scope of recognition: the accreditation of graduate programs in health services administration)

5. American Osteopathic Association, Bureau of Professional Education (Requested scope of recognition: the accreditation and preaccreditation [''Provisional Accreditation''] of freestanding institutions of osteopathic medicine and programs leading to the degree of Doctor of Osteopathy or Doctor of Osteopathic Medicine)

6. American Podiatric Medical Association, Council on Podiatric Medical Education (Requested scope of recognition: the accreditation and preaccreditation [''Candidate Status''] of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine)

7. Council on Occupational Education (Requested scope of recognition: the accreditation and preaccreditation [''Candidate for Accreditation''] of non-degree granting postsecondary occupational/vocational institutions and those postsecondary occupational/vocational education institutions that grant the applied associate degree in specific vocational/occupational fields)

8. National Council for Accreditation of Teacher Education (Requested scope of recognition: the accreditation of professional education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools)

9. New York State Board of Regents (Current scope of recognition: the accreditation [registration] of collegiate

degree-granting programs or curricula offered by institutions of higher education located in the State of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education located in the State of New York. Requested scope of recognition: the preaccreditation and accreditation of those degree-granting institutions in New York State that designate the Board of Regents as their sole nationally recognized accrediting agency or as their primary nationally recognized accrediting agency for purposes of establishing eligibility for HEA Title IV funds)

10. North Central Association of Colleges and Schools, Executive Board of the Commission on Schools (Requested scope of recognition: the accreditation and preaccreditation [''Candidate for Accreditation''] of schools offering non-degree, postsecondary education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, and the Navajo Nation.

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accreditation Board for Engineering and Technology, Inc.
2. Accrediting Council for Continuing Education and Training
3. Accreditation Commission of Career Schools and Colleges of Technology
4. Association for Clinical Pastoral Education, Inc.
5. Association of Theological Schools in the United States and Canada, Commission on Accrediting
6. Montessori Accreditation Council for Teacher Education, Commission on Accreditation
7. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education
8. New England Association of Schools and Colleges, Commission on Institutions of Higher Education
9. Northwest Association of Schools and Colleges, Commission on Colleges
10. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges
11. Western Association of Schools and Colleges, Accrediting Commission for Schools

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Oklahoma State Regents for Higher Education

Interim Report

1. Missouri State Board of Education

State Agencies Recognized for the Approval of Nurse Education

Interim Report

1. Missouri State Board of Nursing
2. New Hampshire Board of Nursing

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, 1990 K Street, NW, 7th Floor, Room 7105, Washington, DC 20006–8509, telephone (202) 219–7011 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, until November 17, 2000. They will be available again after the December 11–13 Advisory Committee meeting. It is preferred that an appointment be made in advance of such inspection or copying.

Authority: 5 U.S.C. Appendix 2.

Dated: June 8, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–14876 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's Laboratory Operations Board (LOB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

NAME: Secretary of Energy Advisory Board—Laboratory Operations Board.

DATES: Wednesday, June 21, 2000, 8:30 A.M.—3:15 P.M., Eastern Daylight Time.

ADDRESSES: Spallation Neutron Source Project Building, Room 101A, 701 Scarboro Road, Oak Ridge National Laboratory, Oak Ridge National Laboratory, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Laurie Keaton, LOB Staff Director, Office of Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7162 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide independent external advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Wednesday, June 21, 2000

8:30 a.m.–8:45 a.m. Co-Chairs Opening Remarks
8:45 a.m.–9:15 a.m. Legislative Update
9:15 a.m.–9:45 a.m. Summary of Lab Director's Meeting
9:45 a.m.–10 a.m. Lab Responses to NIF Interim Report
10 a.m.–10:15 a.m. Break
10:15 a.m.–11:15 a.m. Update on Foreign Visits and Assignments Program
11:15 a.m.–11:30 a.m. LOB Terms of Reference
11:30 a.m.–12 a.m. LOB Work Plan
12 p.m.–1 p.m. Lunch
1 p.m.–2 p.m. Lab Stories: Performance-Based Management
2 p.m.–3 p.m. Management Initiatives at the Department of Energy Headquarters
3 p.m.–3:15 p.m. Public Comment Period
3:15 p.m. Adjourn

This tentative agenda is subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to monitor the business of the Laboratory Operations Board and to submit written comments or comment during the scheduled public comment period. The meeting will be conducted in a fashion that will, in the Co-Chairs' judgment, facilitate the orderly conduct of business. During its open meeting, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written

comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9 A.M. and 4 P.M., Monday through Friday except Federal holidays. Further information on the Laboratory Operations Board is available at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on June 7, 2000.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 00–14865 Filed 6–12–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–3760–000; EC96–19–000 and ER96–1663–000]

California Independent System Operator Corporation and California Independent System Operator Corporation (Not Consolidated); Notice of Filing

June 7, 2000.

Take notice that on May 26, 2000, the California Independent System Operator Corporation (ISO) tendered and Answer in the above-captioned docket. The Answer includes ISO Tariff sheets correcting several errors in the Tariff sheets submitted by the ISO as part of its Compliance Filing made in the above-captioned docket on April 20, 2000.

The ISO states that this filing has been serve upon all parties on the restricted service list compiled by the Secretary in the above-captioned proceedings.

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 Procedures (18 CFR 385.211 and 385.214). All such motions and protests should be files on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriated 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. 00–14821 Filed 6–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal energy Regulatory Commission

[Docket No. CP00–372–000]

TCP Gathering Company; Notice of Application

June 7, 2000.

Take notice that on May 31, 2000, TCP Gathering Company (TCP Gathering), 555 Seventeenth Street, Denver, Colorado 80202–3918, filed in Docket No. CP00–372–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), and Section 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations for permission and approval to abandon interstate transportation service, and certain natural gas facilities located in San Juan County, Utah and San Miguel County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202)208–2222 for assistance.

TCP Gathering explains that, upon receipt of abandonment authorization, it would reconfigure its facilities, consisting of approximately 28 miles of 8-inch and 4-inch pipeline, to connect them to an existing gathering system owned and operated by TCP Gathering's new owner Tom Brown, Inc. (Tom Brown) and would operate the facilities as gathering facilities exempt from the Commission's regulation pursuant to Section 1(b) of the NGA.

Currently, TCP Gathering has only one shipper, with whom it has an interruptible transportation contract. The shipper's gas transported from the shipper's well in the Little Valley field in San Juan County, Utah for delivery to Rocky Mountain Natural Gas company, TCP Gathering's previous owner, in San Miguel County, Colorado. TCP Gathering states that, upon obtaining the requested abandonment authority, it will construct an interconnection with Tom Brown's Lisbon Field gathering system in San Juan County, Utah, and plans to gather gas from wells along the length of TCP Gathering's system in Utah and Colorado for delivery to the Lisbon Field where the gas will be processed in the Lisbon Plant.

If there are any further questions regarding this proposal, the following individual may be contacted: Bruce R. DeBoer, TCP Gathering company, 555 Seventeenth Street, Suite 1850, Denver, Colorado 80202–3918, at (303) 260–5000.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 28, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, a protest or motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for TCP Gathering to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14822 Filed 6–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–159–000, et al.]

Front Range Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 7, 2000.

Take notice that the following filings have been made with the Commission:

1. Front Range Power Company, LLC,

[Docket No. EG00–159–000]

Take notice that on June 5, 2000, Front Range Power Company, LLC, 6647 Generation Drive, Fountain, Colorado 80817, filed with the Federal Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Front Range Power Company, LLC is a Colorado limited liability company formed by Coastal Power Company (Coastal), a Delaware corporation and wholly owned affiliate of The Coastal Corporation and Colorado Springs Utilities (CSU), an enterprise of the City of Colorado Springs, Colorado, to develop, design, construct, own, operate and maintain a natural gas-fired combined-cycle electric generation plant with a maximum capacity of approximately 480 MW, located on a 23-acre parcel of land approximately 17 miles south of Colorado Springs, Colorado.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Southaven Power, LLC

[Docket No. EL00–81–000]

Take notice that on June 1, 2000, Southaven Power, LLC (Southaven) filed a request for waiver of requirements under Order Nos. 888 and 889, with respect to certain interconnection facilities associated with Southaven's generating facility to be located near Southaven, Mississippi.

Comment date: July 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1666–000]

Take notice that on June 1, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed a notification as directed by the Commission's Order in Docket No. ER00–1666–000 on May 8, 2000 at 91 FERC ¶ 61,122, that it had adopted the revised North American Electric Reliability Council Transmission Loading Relief Procedures accepted for filing by that Order.

Copies of the filing have been provided to jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER00–2671–000]

Take notice that on June 1, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing the Service Agreement between Virginia Electric and Power Company and Associated Electric Cooperative, Inc. Under the Service Agreement, Virginia Power will provide services to Associated Electric Cooperative, Inc. under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of June 1, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon Associated Electric Cooperative, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER00–2672–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Long-Term Firm Out Service to Williams Energy Marketing &Trading Company, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

An effective date of July 1, 2000 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER00–2673–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to PG&E Energy Trading—Power LP, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

An effective date of June 1, 2000 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER00–2674–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Mead Oxford Corporation (Mead Oxford). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of

Mead Oxford's signature page would permit NEPOOL to expand its membership to include Mead Oxford. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Mead Oxford a member in NEPOOL.

The Participants Committee requests an effective date of August 1, 2000, for commencement of participation in NEPOOL by Mead Oxford.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER00–2675–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by the Energy Council of Rhode Island (TEC–RI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of TEC–RI's signature page would permit NEPOOL to expand its membership to include TEC–RI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TEC–RI a member in NEPOOL.

The Participants Committee requests an effective date of June 1, 2000, for commencement of participation in NEPOOL by TEC–RI.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Panda Perkiomen Power, L.P.

[Docket No. ER00–2676–000]

Take notice that on June 1, 2000, Panda Perkiomen Power, L.P. (Panda Perkiomen), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting Panda Perkiomen to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

Panda Perkiomen intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Panda Perkiomen sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Perkiomen nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. American Ref-Fuel Company of Delaware Valley, L.P.

[Docket No. ER00–2677–000]

Take notice that on June 1, 2000, American Ref-Fuel Company of Delaware Valley, L.P. (ARC), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations (18 CFR Part 35), a Petition for authorization to make sales of electric capacity and energy at market-based rates and for related waivers and blanket authorizations.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Indianapolis Power & Light Company

[Docket No. ER00–2678–000]

Take notice that on June 1, 2000, Indianapolis Power & Light Company (IPL) tendered for filing blanket service agreements under IPL's Wholesale Power Sales Tariff. The Tariff was accepted for filing effective April 29, 2000 and has been designated as IPL's FERC Electric Tariff Revised Volume 2.

IPL is requesting waiver of notice to permit the service agreements to be made effective May 17, 2000.

A copy of the filing was served upon the parties to the service agreements.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER00–2680–000]

Take notice that on June 1, 2000, Indianapolis Power & Light Company (IPL) tendered for filing unexecuted service agreements for service under IPL's Wholesale Power Sales Tariff. The Tariff was accepted for filing effective April 29, 2000 and has been designated as IPL's FERC Electric Tariff Revised Volume 2.

IPL is requesting waiver of notice to permit the service agreements to be made effective June 1, 2000.

A copy of the filing was served upon the parties to the service agreements.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Services Company

[Docket No. ER00–2681–000]

Take notice that on June 1, 2000, Ameren Services Company (AMS) tendered for filing an Interconnection Agreement between AMS and Reliant Energy Shelby County, LP (Reliant). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of Reliant, the point of interconnection and Corporate Guaranty.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14842 Filed 6–12–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6715–2]

Notification of Episodic Releases of Oil and Hazardous Substances; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notification of Episodic Releases of Oil

and Hazardous Substances (EPA ICR No. 1049.09, OMB No. 2050–0046). This is a request to renew an existing ICR that is currently approved. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection.

DATES: Comments must be submitted on or before August 14, 2000.

ADDRESSES: Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To ensure proper receipt by EPA, it is imperative that you identify docket control number 102RQ–ER2 in the subject line on the first page of your comment. Comments may also be submitted electronically or in person. Please follow the detailed instructions for these submission methods as provided in unit III of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov. Comments should not be submitted to this contact person.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be affected by this notice if you are the person in charge of a facility or vessel that releases hazardous substances into the environment or discharges oil into U.S. waters as specified in section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and section 311 of the Clean Water Act (CWA), as amended. To determine if the facility or vessel you are in charge of is affected by this action, you should carefully examine the applicability provisions at 40 CFR parts 110, 117, and 302.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. By Phone, Fax, or E-Mail

If you have any questions or need additional information about this notice or the information collection request (ICR) referenced, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

B. In Person

The official record for this notice, including the public version, and the referenced ICR have been established under docket control number 102RQ–ER2 (including comments and data submitted electronically, as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), and the referenced ICR are available for inspection in the U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Superfund Docket is open from 9 am to 4 pm, Monday through Friday, excluding legal holidays. The telephone number of the Superfund Docket is (703) 603–9232.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the docket control number 102RQ–ER2 in your correspondence.

1. By mail. Submit written comments to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

2. In person or by courier. Deliver written comments to: U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Telephone: (703) 603–9232.

3. Electronically. Submit your comments and/or data electronically by e-mail to: superfund.docket@epa.gov. Please note that you should 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. Comment and data will also be accepted on standard computer disks in WordPerfect 6/7/8 or ASCII file format. All comments and data in electronic form must be identified by the docket control number 102RQ–ER2. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to EPA?

You may claim information that you submit in response to this notice 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. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

C. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of EPA, including whether the information will have practical utility.

2. Evaluate the accuracy of EPA's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.,* permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options EPA proposes, new approaches EPA hasn't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like EPA to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide technical information and/or data to support your views.

• If you estimate potential burden or costs, explain how you arrived at the estimate.

• Provide specific examples to illustrate your concerns.

• Offer alternative ways to improve the rule or collection activity.

• Make sure to submit your comments by the deadline in this notice.

• At the beginning of your comments (*e.g.,* as part of the ''Subject'' heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA ICR or the Office of Management and Budget (OMB) control number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Notification of Episodic Releases of Oil and Hazardous Substances.

ICR numbers: EPA ICR No. 1049.09 OMB No. 2050–0046.

ICR status: This ICR is currently scheduled to expire on June 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ) limit. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 311 of the CWA, as amended, requires the person in charge of a vessel to immediately notify the NRC of an oil spill into U.S. navigable waters if the spill causes a sheen, violates applicable water quality standards, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. Likewise, the reporting of oil spills allows the Federal government to determine whether cleaning up the oil spill is necessary to mitigate or prevent damage to public health or welfare or the environment.

The hazardous substance and oil release information collected under CERCLA section 103(a) and CWA section 311 also is available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Emergency Response Notification System (ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and the regulated community use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. ERNS fact sheets, which provide summary and statistical information about hazardous substance and oil release notifications, also are available to the public.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and use 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 4.1 hours per reportable hazardous substance release or oil spill. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are facilities or vessels that manufacture, process, transport, or otherwise use certain specified hazardous substances and oil.

Estimated total number of reportable releases of hazardous substances and oil per year: 29,204.

Frequency of response: When a reportable release occurs.

Estimated total annual burden hours: 119,737 hours.

Estimated total annual burden costs: $3,411,000.

VI. Are There Changes in the Estimates from the Last Approval?

In the renewal ICR, EPA will review the current burden and cost statement and adjust it accordingly. EPA does not expect the burden and cost statement in the renewal ICR to differ significantly from the burden and cost statement in the current ICR.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

List of Subjects

Environmental protection, Information collection requests, Reporting and record keeping requirements.

Dated: June 1, 2000.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 00–14868 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6715–1]

Continuous Release Reporting Regulations (CRRR) Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (EPA ICR No. 1445.05, OMB No. 2050–0086). This is a request to renew an existing ICR that is currently approved. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection.

DATES: Comments must be submitted on or before August 14, 2000.

ADDRESSES: Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To ensure proper receipt by EPA, it is imperative that you identify docket control number 102RQ–CR2 in the subject line on the first page of your comment. Comments may also be submitted electronically or in person. Please follow the detailed instructions for these submission methods as provided in unit III of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov. Comments should not be submitted to this contact person.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be affected by this notice if you are in charge of a facility that releases hazardous substances into the environment as specified in section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. According to section 103(a) of CERCLA, if the facility you are in charge of releases a hazardous substance that equals or exceeds its reportable quantity (RQ) and the release is not Federally permitted, you are required to notify the National Response Center (NRC) of the release immediately. However, according to section 103(f)(2) of CERCLA, if the release at the facility you are in charge of is ''continuous,'' and ''stable in quantity and rate,'' you may be exempted from the per-occurrence notification requirements of section 103(a) of CERCLA. To determine if the facility you are in charge of is affected by this action, you should carefully examine the applicability provisions in the Continuing Release Reporting Regulations (CRRR) (40 CFR part 302.8).

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. By Phone, Fax, or E-Mail

If you have any questions or need additional information about this notice or the information collection request (ICR) referenced, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

B. In Person

The official record for this notice, including the public version, and the referenced ICR have been established under docket control number 102RQ–CR2 (including comments and data submitted electronically, as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), and the referenced ICR are available for inspection in the U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Superfund Docket is open from 9 AM to 4 PM, Monday through Friday, excluding legal holidays. The telephone number of the Superfund Docket is (703) 603–9232.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the docket control number 102RQ–CR2 on any correspondence.

1. By mail. Submit written comments to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

2. In person or by courier. Deliver written comments to: U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Telephone: (703) 603–9232.

3. Electronically. Submit your comments and/or data electronically by e-mail to: superfund.docket@epa.gov. Please note that you should 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. Comment and data will also be accepted on standard computer disks in WordPerfect 6/7/8 or ASCII file format. All comments and data in electronic form must be identified by the docket control number 102RQ–CR2. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit To EPA?

You may claim information that you submit in response to this notice 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. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

C. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of EPA, including whether the information will have practical utility.

2. Evaluate the accuracy of EPA's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.,* permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options EPA proposes, new approaches EPA hasn't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like EPA to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (*e.g.*, as part of the ''Subject'' heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to this notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA ICR or the Office of Management and Budget (OMB) control number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

ICR numbers: EPA ICR No. 1445.05, OMB No. 2050–0086.

ICR status: This ICR is currently scheduled to expire on September 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a facility to immediately notify the NRC of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's RQ. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR part 302.4. Section 103(f)(2) of CERCLA provides facilities relief from this per-occurrence notification requirement if the hazardous substance release above the RQ is continuous, and stable in quantity and rate. Under the CRRR, a continuous release of a hazardous substance above the RQ requires an initial telephone call to the NRC, an initial written report to the EPA Region, and, if the source and chemical composition of the continuous release does not change and the level of the continuous release does not significantly increase, a follow-up written report to the EPA Region one year after submission of the initial written report. If the source or chemical composition of the previously reported continuous release changes, notifying the NRC and EPA Region of a change in the source or composition of the release is required. Further, a significant increase in the level of the previously reported continuous release must be reported immediately to the NRC according to section 103(a) of CERCLA. Finally, any change in information submitted in support of a continuous release notification must be reported to the EPA Region.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment.

The continuous release of hazardous substance information collected under CERCLA section 103(f)(2) is also available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Continuous Release-Emergency Response Notification System (CR–ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and facilities subject to the CRRR use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. CR-ERNS fact sheets, which provide summary and statistical information about hazardous substance release notifications, also are available to the public.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and use 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 77 hours per affected facility. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are facilities that manufacture, process, or otherwise use certain specified hazardous substances.

Estimated total number of facilities that will have to report continuous hazardous substance releases per year: 2,342.

Frequency of response: After reporting the continuous release to the NRC and EPA Region initially, only an annual report to the EPA Region is necessary unless there is a change in the source of

the continuous release, a change in the chemical composition of the continuous release, or a significant increase in the level of the continuous release. In these cases the person in charge of the facility has to notify the NRC and/or the EPA Region of the change in the continuous release.

Estimated total annual burden hours: 24,732 hours.

Estimated total annual burden costs: $725,000.

VI. Are There Changes in the Estimates From the Last Approval?

In the renewal ICR, EPA will review the current burden and cost statement and adjust it accordingly. EPA does not expect the burden and cost statement in the renewal ICR to be any greater than the burden and cost statement in the current ICR.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

List of Subjects

Environmental protection, Information collection requests, Reporting and record keeping requirements.

Dated: June 1, 2000.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 00–14869 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC) has submitted a request for clearance of the information collection described below to the Office of Management and Budget (OMB). A notice that the EEOC would be submitting this request was published in the **Federal Register** on March 1, 2000, allowing for a 60-day public comment period. No public comments were received.

DATES: Written comments on this final notice must be submitted on or before July 13, 2000.

ADDRESSES: Comments on this final notice should be submitted to the Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Desk Officer for the U.S. Equal Employment Opportunity Commission, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to SSHAPIRO@OMB.EOP.GOV. Requests for copies of the proposed information collection request should be addressed to Mr. Neckere at the address below.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION:

Collection Title: State and Local Government Information (EEO–4).

OMB Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more full-time employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Number of Responses: 10,000.

Reporting Hours: 40,000.

Number of Forms: 1.

Federal Cost: $47,000.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirements for various kinds of employers. State and local governments with 100 or more full-time employees have been required to submit EEO–4 reports since 1973 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against state and local governments. In addition, the data are used to support EEOC decisions and conciliations, and for research. The data are shared with several other Federal government agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO–4 survey is 5,000 state and local governments. The estimated number of responses per respondent is approximately 2 EEO–4 reports and the reporting burden averages between 1 and 5 hours per response, including the time needed to review instructions, search existing data sources, gather and maintain the data, and complete and review the collection of information. The total number of responses is thus 10,000 reports while the total burden is estimated to be 40,000 hours, including recordkeeping burden. In order to help reduce burden, respondents are encouraged to report data on electronic media such as magnetic tapes and diskettes.

Dated: June 7, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–14889 Filed 6–12–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

June 7, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 14, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0341.

Title: Section 73.1680 Emergency antennas.

Form Number: None.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Number of Respondents: 142.

Estimated time per response: 1.5 hours (0.5 hours respondent; 1.0 hour contract attorney).

Frequency of response: reporting, on occasion.

Total annual burden: 71 hours.

Total annual costs: $28,400.

Needs and Uses: Section 73.1680 requires that licensees of AM, FM or TV stations submit an informal request to the FCC (within 24 hours of commencement of use) to continue operation with an emergency antenna. An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used. The data is used by FCC staff to ensure that interference is not caused to other existing stations.

OMB Control Number: 3060–0340.

Title: Section 73.51 Determining operating power.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,867.

Estimated time per response: 0.25 hours per notation/3 hours per efficiency factor determination.

Frequency of response: Recordkeeping.

Total annual burden: 1,448 hours.

Total annual costs: $0.

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power may be used on a temporary basis. Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. Section 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. This recordkeeping requirement is used by FCC staff in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. The value F (efficiency factor) is used by station personnel in the event that measurement by the indirect method of power is necessary.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14873 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 7, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 14, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0607.

Title: Rates for Basic Service Tiers and Cable Programming Tiers–Section 76.922.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local or Tribal Government.

Number of Respondents: 2,275.

Estimated Time Per Response: Varies.

Total Annual Burden: 9,150 hours.

Total Annual Costs: $500.

Needs and Uses: The information is used by Commission staff to ensure that qualified small systems have additional incentives to add channels and that small systems are able to recover costs for headend upgrades when doing so.

OMB Control Number: 3060–0561.

Title: Assumption of Jurisdiction by the Commission.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local or Tribal Government.

Number of Respondents: 50.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 400 hours.

Total Annual Costs: $1,000.

Needs and Uses: The information collection requirements reported under this control number are used by Commission staff to identify situations where it should exercise jurisdiction over basic service and equipment rates in place of a local franchising authority.

OMB Control Number: 3060–0700.

Title: Open Video Systems Provisions

Form Number: FCC 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local or Tribal Government.

Number of Respondents: 708.

Estimated Time Per Response: Varies.

Total Annual Burden: 3,910 hours.

Total Annual Costs: $9,000.

Needs and Uses: Section 302 of the Telecommunications Act of 1996 provides for specific entry options for entities wishing to enter the video programming marketplace, one option being to provide cable service over an ''Open Video System'' (''OVS''). On April 15, 1997, the Commission released a Fourth Report and Order, FCC 97–130, which clarified various OVS rules and modified certain OVS filing procedures.

OMB Control Number: 3060–0565.

Title: Commission Review of Franchising Authority Decisions on Rates for the Basic Service Tier and Associated Equipment—Section 76.944.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local or Tribal Government.

Number of Respondents: 300.

Estimated Time Per Response: Varies.

Total Annual Burden: 5,400 hours.

Total Annual Costs: $340,500.

Needs and Uses: The information collected is reviewed by the Commission to ensure that franchising authority decisions regarding cable rates are consistent with the provisions of the Cable Television Consumer Protection and Competition Act of 1992 and the Commission's rules regarding cable rate regulation. Commission review of appeals is necessary to ensure uniformity of interpretation of federal guidelines.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14875 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Thomas W. Healy,* Olympia, Washington; Ned D. Williams, Gig Harbor, Washington; Ronald W. Pemberton, Lakewood, Washington; James D. Marchetti, Gig Harbor, Washington; Charles H. Kester, Bellevue, Washinton; Robert H. Pearson, Gig Harbor, Washington; Carole J. Axtell, Puyallup, Washington; Timothy A. Williams, Tacoma, Washington; to acquire voting shares of Pierce County Bancorp, Tacoma, Washington, and thereby indirectly acquire voting shares of Pierce Commercial Bank, Tacoma, Washington.

Board of Governors of the Federal Reserve System, June 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14848 Filed 6–12–00; 8:45 am]

BILLING CODE 6210–01–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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 July 7, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Peoples Financial Group, Inc.,* Iva, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank, Iva, South Carolina.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Regions Financial Corporation,* Birmingham, Alabama; to merge with First National Bancshares of Louisiana, Inc., Alexandria, Louisiana, and thereby indirectly acquire Security First National Bank, Alexandria, Louisiana.

2. *Regions Financial Corporation,* Birmingham, Alabama; to merge with East Coast Bank Corporation, Ormond Beach, Florida, and thereby indirectly acquire Bank at Ormond By-the-Sea, Ormond Beach, Florida.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *IBT Bancorp, Inc.,* Mt. Pleasant, Michigan; to merge with FSB Bancorp, Inc, Breckenridge Michigan, and thereby indirectly acquire Farmers State Bank of Breckenridge, Breckenridge, Michigan.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin

Avenue, Minneapolis, Minnesota 55480–0291:

1. *Inter-Mountain Bancorp., Inc.,* Bozeman, Montana; to merge with Three Forks Bancorporation, Three Forks, Montana; and thereby indirectly acquire Security Bank of Three Forks, Three Forks, Montana.

Board of Governors of the Federal Reserve System, June 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14846 Filed 6–12–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 2000.

A. **Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Pierce County Bancorp,* Tacoma, Washington; to acquire Olympic Equities Corporation, Puyallup, Washington, and thereby engage in making residential and construction loans and other related activities related to the extension of credit, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14847 Filed 6–12–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), all authorities vested in the Secretary of Health and Human Services under Part D, Title III of the PHS Act, Subpart IX—Support of Graduate Medical Education Programs, as amended. This delegation excludes the authority to issue regulations and to submit reports to Congress This authority may be redelegated.

In addition, I hereby ratify any actions taken by the Administrator or other HRSA officials which involved exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: June 2, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–14802 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science, and National Institutes of Health, Office of the Director; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary (OS) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS), Chapter AC, Office of Public Health and Science (OPHS), the Immediate Office (ACA) as last amended at 62 FR 5009–10, dated February 3, 1997; and Part N, the National Institutes of Health, Office of the Director (NA), Office of Extramural Research (NA3), Office for Protection from Research Risks, as last amended at 65 FR 11792, March 6, 2000, are being amended to reflect the transfer of the human research protection functions from the NIH to the newly established Office for Human Research Protections (OHRP), OPHS, within the OS. The OHRP will be headed by a Director who will report to the Assistant Secretary for Health.

The changes are as follows:

I. Under Part N, National Institutes of Health, Chapter NA, Office of Director, Office of Extramural Research (NA3), make the following changes:

A. Delete the ''Office of Extramural Research (NA3)'' in its entirety and replace with the following:

Office of Extramural Research (NA3)—(1) Acts on behalf of the NIH Director to provide guidance to the research institutes on the development and management of extramural (grant and cooperative agreement) research and training programs; (2) advises the NIH Director and staff on issues relating to extramural research activities; and (3) oversees the proper care and use of laboratory animals on behalf of the entire U.S. Public Health Service.

B. Delete the ''Office for Protection from Research Risks (NA33)'' in its entirety.

II. Under Part A, Chapter AC, Office of Public Health and Science, make the following changes:

A. Delete Section AC.10 Organization in its entirety and replace with the following:

Section AC.10 Organization. The Office of Public Health and Science (AC) is under the direction of the Assistant Secretary for Health and consists of the following components:

A. Immediate Office (ACA)
B. Office on Women's Health (ACB)
C. Office of Minority Health (ACC)
D. Office of the President's Council on Physical Fitness and Sports (ACE)
E. Office of Research Integrity (ACF)
F. Office of Population Affairs (ACG)
G. Office of International and Refugee Health (ACH)
H. Office of HIV/AIDS Policy (ACJ)
I. Office of Emergency Preparedness (ACK)
J. Office of Disease Prevention and Health Promotion (ACL)
K. Office of the Surgeon General (ACM)
L. Office for Human Research Protections (ACN)

B. Amend Chapter AC.20 Functions, paragraph A, ''Office of Public Health and Science,'' paragraph titled, ''The Immediate Office (ACA)'' by adding the following new clause:

(m) Responsible for overseeing human research subjects protections functions and related functions where research involves the use of human subjects.

C. Under Section AC.20 Functions, add paragraph ''L. Office for Human Research Protections (ACN),'' to read as follows:

L. Office for Human Research Protections (ACN)—The Office for Human Research Protections (OHRP) fulfills responsibilities set forth in the Public Health Service Act. These include: (1) Developing and monitoring as well as exercising compliance oversight relative to HHS Regulations for the protection of human subjects in research conducted or supported by any component of the Department of Health and Human Services; (2) coordinating appropriate HHS regulations, policies, and procedures both within HHS and in coordination with other Departments and Agencies in the Federal Government; (3) establishing criteria for and negotiation of Assurances of Compliance with institutions engaged in HHS-conducted or—supported research involving human subjects; (4) conducting programs of clarification and guidance for both the Federal and non-Federal sectors with respect to the involvement of humans in research; and directing the development and implementation of educational and instructural programs and generating educational resource materials; (5) evaluating the effectiveness of HHS policies and programs for the protection of human subjects; (6) serving as liaison to Presidential, Departmental, Congressional, interagency, and non-governmental commissions and boards established to examine ethical issues in medicine and research and exercises leadership in identifying and addressing such ethical issues; and (7) promoting the development of approaches to enhance and improve methods to avoid unwarranted risks to humans participating as subjects in research covered by applicable statutes and regulations.

1. Office of the Director (ACN1)—The Office of the Director reports to the Assistant Secretary for Health, supervises and manages the development and promulgation of policies, procedures, and plans for meeting the responsibilities set forth above. Additionally, staff of this office advise the Secretary, Assistant Secretary for Health and other HHS officials on ethnical issues pertaining to medicine and biomedical and behavioral research, including all issues relative to the implementation of HHS Regulations for the Protection of Human Subjects. Directs the development, implementation, and compliance oversight activities for HHS Regulations and for the Protection of Human Subjects; exercises oversight and negotiates Assurances of Compliance in all areas of human subject research; maintains liaison and coordinates policy implementation with components throughout HHS that conduct or support research involving human subjects; and directs the development and implement of educational and instructional programs and generates resource materials relating to the responsibilities of the research community for the protection of human subjects.

2. Division of Policy and Assurance (ACN 2)—(1) Negotiates Assurances of Compliance with research entities; (2) provides liaison, guidance, and regulatory interpretation to research entities, investigators, Federal officials, and the public; (3) maintains existing assurance mechanisms; and (4) develops and implements new procedures to ensure that HHS human subjects protection regulations are appropriately and effectively applied to the changing needs of the research community.

3. Division of Compliance Oversight (ACN 3)—(1) Conducts inquiries and investigations into alleged noncompliance with HHS Regulations for Protection of Human Subjects; (2) prepares inquiry and investigative reports; (3) recommends remedial or corrective action as necessary to agency or Department officials as appropriate; and (4) conducts a program of oversight of awardee institution implementation of HHS Regulations for the Protection of Human Subjects.

4. Division of Education and Development (ACN 4)—(1) Produces and coordinates conferences and workshops focusing on issues in human subjects protection; (2) promotes cooperative education and development efforts among external groups and consortia to improve human subjects protections and related processes; (3) promptly responds to requests for clarification and guidance regarding ethnical issues in biomedical and behavioral research involving human subjects; (4) provides technical assistance to institutions engaged in HHS-conducted or -sponsored research involving human subjects; and, (5) maintains, promulgates, and updates educational and institutional review guidance materials.

D. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the National Institutes of Health and the Office of the Secretary heretofore issued and in effect prior to this reorganization are continued in full force and effect.

E. Delegation of Authority: All delegations and redelegations of authority made officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

F. Funds, Personnel, and Equipment: Transfer or organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

G. Effective Date: The effective date of this reorganization is June 18, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–14803 Filed 6–12–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry

[Program Announcement 00075]

Announcement of a Cooperative Agreement WAith the Association of American Medical Colleges (AAMC) To Strengthen the Collaboration Between the Disciplines of Medicine and Public Health; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2000 funds for a cooperative agreement with the Association of American Medical Colleges (AAMC). CDC and ATSDR (hereinafter referred to as CDC) are committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010'', a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all ''Healthy People 2010'' focus areas.

The purpose of the program is to help strengthen the collaborations between the disciplines of medicine and public health. Medicine and public health are two interdependent disciplines that diverged in practice and training during the last century; however, new efforts have been initiated to increase and to improve their collaborative activities in the new century. In light of the changing health care system and the evolving challenges to public health, future physicians need a better understanding of public health. This program will

strive to train the medical community on the needs of public health issues.

B. Eligible Applicant

Assistance will be provided only to the Association of American Medical Colleges (AAMC). No other applications are solicited. AAMC is uniquely qualified to be the recipient organization for the following reasons:

1. The AAMC's mission is to improve the health of the public by enhancing the effectiveness of academic medicine through educating the physician and medical scientist workforce, discovering new medical knowledge, developing innovative technologies for prevention, diagnosis and treatment of disease, and providing health care services in an academic setting. AAMC's principal purpose is to promote and improve the education and training of professional medical practitioners. AAMC has the requisite institutional knowledge of the needs of the schools of medicine. AAMC conducts periodic assessments of the status and needs of their member organizations, including medical schools and academic medical centers.

2. AAMC, a non-profit association, represents all the 125 schools of allopathic medicine in the United States that are accredited by the Liaison Committee on Medical Education. These schools represent the primary educational system that provides the Nation's physicians with their undergraduate medical education.

3. With the active participation of the deans of the medical schools, the AAMC is the only organization that can comprehensively affect the development and implementation of improved disease prevention and health promotion curricula in all accredited schools of medicine, and provide opportunities for students, faculty, and researchers to incorporate the perspectives of public health, and disease prevention and health promotion.

4. AAMC provides leadership both nationally and internationally in an effort to achieve excellence in undergraduate medical education. Through its Divisions of Biomedical and Health Sciences Research, Community and Minority programs, and Medical Education, as well as its participation in the Liaison Committee on Graduate Medical Education, AAMC is well positioned to address and resolve issues that promote and support implementation of training strategies.

5. AAMC has attained a prominent position among national health professional associations. AAMC currently sponsors national meetings designed specifically for the faculty of medical schools and academic medical centers, to address contemporary issues in medical education and research.

6. AAMC member organizations also include academic medical centers (that house the majority of the medical residency programs—graduate medical education), academic and professional societies (representing 75,000 faculty members), medical student representatives, and resident representatives.

7. AAMC provides unique opportunities for medical and public health academicians, practitioners, and researchers to share their experience and expertise; to facilitate incorporation of the theoretical and practical perspectives of public health into curricula for teaching prevention, health promotion, and preventive medicine; and to stimulate participation by medical institutions in prevention research.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form of financial assistance.

C. Availability of Funds

Approximately $300,000 is available in FY 2000 to fund this award. It is anticipated that the award will begin on or before September 30, 2000, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

For business management assistance, contact: Juanita D. Crowder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2734, E-mail address: jdd2@cdc.gov.

For you assistance with forms, please refer to the following Internet site: The CDC Internet home page is http://www.cdc.gov.

For a program technical assistance, contact; Rika Maeshiro, Senior Preventive Medicine Advisor, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention, 4770 Buford Hwy. (K–38), Atlanta, Georgia 30341–3724, Telephone: (770) 488–2508, E-mail address: rmaeshiro@cdc.gov.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14833 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00079]

Association of State and Territorial Directors of Health Promotion and Public Health Education (ASTDHPPHE); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement with the Association of State and Territorial Directors of Health Promotion and Public Health Education (ASTDHPPHE), an affiliate of the Association of State and Territorial Health Officials (ASTHO).

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010'' a national activity to reduce morbidity and mortality and improve the quality of life. For the conference copy of ''Healthy People 2010,'' reset the internet site: <HTTP://www.health.gov/healthy people>.

This announcement is related to the focus areas of Physical Activity and Fitness, Nutrition, Tobacco Use, Education and Community-Based Programs, Oral Health, Arthritis, Cancer, Diabetes, Disability Conditions, and Heart Disease and Stroke.

The purpose of this cooperative agreement is to address the training, research, and program implementation needs required to build health promotion and public health education capacity at the State and territorial level.

This will include strategic planning for the Association to strengthen the infrastructure for assessment of constituent needs to build health education capacity at the state and territorial level; coordinating the annual National Conference on Health Education and Health Promotion; strengthening collaborations with national and international level partners; developing practice to research

demonstration activities; developing continuing education and distance-based training; and developing leadership and training opportunities.

B. Eligible Applicant

Assistance will be provided only to ASTDHPPHE. No other applications will be solicited. ASTDHPPHE is the only appropriate and qualified agency that can provide the services specified under this announcement.

Eligibility is limited to ASTDHPPHE because of its unique relationship with the Association of State and Territorial Health Officials (ASTHO) and other ASTHO affiliates. ASTDHPPHE is the only national, nonprofit health education organization of which program directors and staff representing all States and territories are members. As such, it is uniquely capable, and organized specifically to serve as a leader and a conferee of activities relative to State Health education programs. ASTHO represents the chief public health official of each State and territory. Through its own membership, ASTHO has developed unique knowledge and understanding of the needs and operations of State Health agencies.

ASTDHPPHE is the only affiliate whose primary mission is to promote health education and health promotion as core disciplines of public health practice and to advocate for quality health education and health promotion programs and strategies to address the nation's leading health problems. ASTDHPPHE has served as a health education and health promotion policy development and capacity building organization since 1946, and over the years it has strengthened public health education goals and objectives. The membership is uniquely diverse and its members, who provide major leadership to State and Territorial categorical health areas, have strengthened health education and health promotion programs nationwide. ASTDHPPHE also provides consultation and technical assistance to numerous agencies and has liaison relationships with many national organizations. In this way, the Association is deeply involved in health education and health promotion program development and evaluation efforts that are conducted nationally.

In collaboration with other national organizations, the association accomplishes its mission by disseminating information on state-of-the-art health education and health promotion policies and strategies. The association has the established relationships and expertise necessary to carry-out this cooperative agreement. The unique information exchange among the ASTDHPPHE members and expert program knowledge provide it with special credibility with national, private, and voluntary agencies. In addition, for the last 16 years ASTDHPPHE has worked with National Center for Chronic Disease Prevention and Health Promotion in co-sponsoring the annual Health education and Health promotion conference. Although other organizations may possess some of these abilities and/or perform some of these roles, no other organization has ASTDHPPHE's unique characteristics. ASTDPPHE is comprised of State health promotion/health education program directors, who are necessary to effectively carry out the activities entailed in this program.

Note: Public Law 104–65 states that an organization described in selection 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $735,000 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be for a 12-month budget period within a project period of up to five years. This funding estimate may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page internet address: http://www.cdc.gov. If you have questions business management technical assistance may be obtained from:

Barry Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 300, 2920 Brandywine Road, Atlanta, Georgia 30341, Telephone: 770/488–2762, E-mail address: bjc8@CDC.gov

For technical assistance, contact:

John M. Korn, Public Health Advisor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE, Mailstop K–30, Atlanta, GA 30341–3717, Telephone: 770/488–5427, E-mail address: jmk3@cdc.gov

Dated: June 6, 2000.

Henry S. Cassel, III,

Deputy Director, Procurement and Grants Office,, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–14828 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00010]

Asthma Surveillance and Interventions in Hospital Emergency Departments; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for asthma surveillance and interventions in hospital emergency departments. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Environmental Health and Respiratory Diseases. For the conference copy of ''Healthy People 2010,'' visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to implement and evaluate a sentinel surveillance system designed to monitor trends in and identify reasons for receiving asthma care in hospital emergency departments; and to develop and implement interventions to improve asthma care and to use the surveillance data to evaluate these interventions.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations; that is, universities, colleges and medical schools affiliated with non-profit hospitals. No other applications are solicited. Universities affiliated with nonprofit hospitals are targeted because they have research expertise and can coordinate with several hospitals emergency departments which will identify asthma patients, enroll them in interventions, and collect and analyze data. Universities are likely to have existing relationships with departments of health and can coordinate surveillance and intervention activities.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of

the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund approximately two awards. It is expected that the average award will be up to $250,000 per year for a three-year period. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

The budget should include a request for travel funds for appropriate key staff to participate in the recipient planning meeting in Atlanta.

D. Program Requirements

In conducting activities to achieve the purpose of this cooperative agreement, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for the activities under 2. (CDC Activities).

1. Recipient Activities

a. Collaborate with the State health department and a total of three to four emergency departments (EDs) in locations serving diverse populations (*e.g.,* rural, urban and suburban) to plan and implement surveillance and model interventions for asthma.

b. Participate in a recipient meeting to coordinate surveillance and intervention activities across sites.

c. Develop and pilot test all data collection instruments.

d. Develop model interventions to reduce severe asthma exacerbations by improving care for asthma.

e. Analyze the data and report surveillance findings to collaborating EDs, the State health department and CDC, make presentations and prepare written manuscripts for publications.

f. Evaluate the surveillance system and the effectiveness of the interventions to reduce severe asthma exacerbations.

2. CDC Activities

a. Provide technical assistance in all stages of the project.

b. Facilitate communication/coordination among recipients to improve efficiency of activities, quality of surveillance data, and effectiveness of interventions.

c. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should not exceed 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font. The applications must be submitted unstapled and unbound.

Applications for the cooperative agreements should include:

1. Background and Need

a. Description of the number of asthma cases, hospitalizations, deaths and/or prevalence in the State.

b. Description of how hospital emergency department surveillance will be used to develop model interventions to improve medical and environmental management of asthma which can result in decreased asthma exacerbations.

c. Description of the applicant's collaborations with other hospitals, hospital emergency departments, health departments and organizations in conducting research or surveillance or developing interventions to reduce morbidity or mortality.

d. Description of collaborating hospital emergency departments' experience in public health initiatives, surveillance projects, research and multi-center studies, including interventions.

e. Description of the health department's experience working with hospital emergency departments or hospitals and relevant asthma prevention surveillance and prevention activities.

2. Goals and Objectives

Description of specific, measurable and time-framed goals and objectives that are consistent with the proposed theme, purpose and objectives.

3. Methods

a. Description of proposed activities to meet the stated goals and objectives. For example, describe how interventions will be developed to meet the needs of the population served.

b. Description of timeline to measure progress in meeting stated goals and objectives.

c. Description of the type of hospital (*e.g.,* private, public, etc.) and the basis for selection of collaborating hospitals (*e.g.,* inner city, urban, suburban and rural) for each participating ED.

d. Description of the experience of principal investigators, collaborating ED contacts, and health department contacts in:

(1) designing, implementing, administering and evaluating surveillance and interventions,

(2) prior publications, and

(3) specific authority to carry out the proposed surveillance and interventions.

e. Include letters of support for each collaborating ED and the health department.

f. Description of the roles of all staff involved in the project for each participating ED and the health department regardless of their funding source. Include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

g. Description of the logistics and personnel involved in data collection, reporting, analysis, evaluation, dissemination of results and publication.

h. Description of how applicant will meet the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the surveillance and interventions. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the surveillance and interventions is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

i. Description of how surveillance findings will be shared to reduce the burden of asthma. EDs may use the findings to develop hospital policies, and health departments may develop community interventions.

j. Description of the planned interventions and how their effectiveness will be evaluated.

4. Evaluation

a. Description of a detailed plan to document progress, effectiveness, impact and outcome.

b. Description of the ability of staff to perform the evaluation.

c. Description of how evaluation findings will be used to improve the surveillance and interventions.

5. Budget Justification

Description of first year budget with future annual projections.

6. Human Subjects

Description of how human subjects will be involved and how they will be protected.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include a brief description of surveillance and interventions planned, the populations served by the participating hospital emergency departments, and State health department asthma prevention and surveillance activities.

The letter of intent must be submitted on or before July 10, 2000 to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001). Forms are in the application kit. On or before August 10, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (20 Points)

a. The extent to which the applicant presents data justifying the need for asthma surveillance and interventions in terms of magnitude of the asthma problem in their area.

b. The extent to which applicant describes how hospital emergency-based surveillance for asthma will be used to develop and evaluate interventions in EDs serving different populations (*e.g.,* inner city, urban, suburban, rural).

c. The extent to which the applicant describes current and previous experiences conducting surveillance, research and/or interventions in hospital emergency departments.

d. The extent to which applicant describes collaborating EDs' past experiences working with the State health department and past surveillance, research and/or intervention activities.

e. The extent to which applicant describes the State health department's experience collaborating with hospitals and hospital emergency departments as well as asthma surveillance and prevention activities.

2. Goals and Objectives (15 Points)

The extent to which the applicant has included goals which are relevant to the purpose of the application and feasible to be accomplished during the project period, and the extent to which these are specific and measurable.

3. Methods (50 Points)

a. The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals including designation of responsibility for each action undertaken.

b. The extent to which applicant provides a reasonable and complete schedule for implementing all activities.

c. The extent to which applicant describes the different populations served by collaborating hospital EDs and demonstrates support from a contact person within each collaborating ED who will serve as coordinator for the project.

d. The extent to which position descriptions, resumes and lines of command are appropriate for accomplishment of program goals and objectives.

e. The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented, especially with regard to data collection, analysis, dissemination, development; implementation of interventions; and evaluation of surveillance and interventions.

f. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed activities. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

g. The extent to which applicant describes how surveillance findings will be shared and used to develop interventions and policies to reduce the burden of acute asthma exacerbations.

h. The extent to which applicant describes the types of interventions, including provisions for continuity of medical care, tailoring interventions to different populations, and the evaluation.

i. The extent to which applicant demonstrates a willingness to collaborate with other recipients.

4. Evaluation (15 points)

a. The extent to which the proposed evaluation system is detailed and will document program progress, effectiveness, impact and outcome.

b. The extent to which applicant documents staff availability, expertise and capacity to perform the evaluation.

c. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

5. Budget and Justification (not scored)

The extent to which the budget is reasonable, adequately justified and consistent with the intended use of grant funds.

6. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management

Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1—Human Subjects Requirements

AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9—Paperwork Reduction Act Requirements

AR–10—Smoke-Free Workplace Requirements

AR–11—Healthy People 2010

AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 of the Public Health Service Act, [42 U.S.C. section 241], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet at: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the program announcement number (00010).

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Sonia Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00010, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, email address: svp1@cdc.gov

For program technical assistance, contact: Pamela Meyer, Epidemiologist, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop E–17, Atlanta GA 30333, telephone: (404) 639–2545, email address: pmeyer@cdc.gov

Dated: June 7, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14830 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00097]

Uniform Population-Based Approach to Case Ascertainment, Typology, Surveillance, and Research on Childhood Diabetes; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to develop a multi-center and uniform population-based approach to case ascertainment, typology, surveillance, and research on childhood diabetes (diagnosis before the age of 20 years). This program addresses the ''Healthy People 2010'' focus area of Diabetes. For the conference copy of ''Healthy People 2010,'' visit the internet site: <http://www.healthypeople>. In view of the importance of racial and ethnic health disparity issues, the purpose of the program is to use a uniform multi-center approach in diverse populations for multiple purposes:

1. Using existing data of known prevalent cases of childhood diabetes, develop a uniform typology of the prevalent cases, obtain type-specific prevalence estimates, and describe characteristics of the different types of childhood diabetes;

2. Based on the extensive collection of new cases of childhood diabetes, develop a uniform typology of the incident cases, obtain accurate and precise population-based estimates of the type-specific incidence and secular trends of new cases, and describe the characteristics of the different types of childhood diabetes;

3. Develop a uniform approach to follow incident cases of childhood diabetes to ascertain changes in typology, characteristics and outcomes, and to maintain a ''pool'' of incident cases of childhood diabetes.

Characterization of types of childhood diabetes should include a description of potential risk factors (including family history, maternal diabetes, race/ethnicity, sex, weight and height, birth-weight, etc), other characteristics (including presence of acanthosis nigricans, symptoms and circumstances at or preceding diagnosis, treatment and response to treatment, HbA1c, lipids, and blood pressure levels, etc), potential laboratory measurements (C-peptide and insulin levels, immunological markers, etc), potential complications (including microalbuminuria, hypertension, retinopathy, neuropathy, infections, etc), and quality of medical care (including screening frequencies for HbA1c, lipid profiles, microalbuminuria, retinal and foot examinations, blood pressure checks, nutrition counseling, rates of hospitalization for complications, etc).

This collaborative program will consist of two phases. Phase I (12 months)—Planning, developing networks of care providers and other partnerships, and collaboration on the development of the protocol and Institutional Review Board clearances. Phase II (48 months)—Data collection, monitoring, analyzes, and collaborative reporting of the results, on a yearly basis.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund approximately 2 to 3 awards. It is expected that the average award will be $200,000 ranging from $150,000 to $250,000. It is anticipated that additional funds may be available in FY 2001–2004 to increase the average award to approximately $500,000 in Years 2–5, ranging from $400,000 to $600,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years.

Funding Estimates May Change

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and must be targeted for implementation and management of the project. Funds can support personnel, activities directly related to the project, and the purchase of software for data collection, analysis, and project management and evaluation purposes.

Prohibited Uses: Cooperative agreement funds under this program announcement cannot be used for (1) construction, (2) renovation, (3) the purchase or lease of passenger vehicles or vans, (4) to supplant non-federal funds that would otherwise be made available for this purpose, or (5) cost of regular patient care.

Funding Priority

In making awards, priority consideration will be given as follows. Due to the high prevalence of type 2 diabetes in American Indian children, funding priority will be given to at least one center which will have access to American Indian populations. In addition, approved applications may also be ranked and funded based on populations with racial/ethnic and socio-economic diversity to achieve geographic, socio-economic and racial/ethnic representation of the U.S. population, and a minimum mix of the different types of childhood diabetes (at least 20% type 2).

Minimum Requirement

Applications for the development of a multi-center and uniform population-based approach to case ascertainment, typology, surveillance, and research on childhood diabetes in diverse populations require access to information on large numbers of children with diabetes (minimum of 50 incident cases per year) and their referent populations (minimum of 300,000 children under the age of 20) with racial/ethnic and socio-economic diversity, including under-insured.

Institutions may apply as a single entity or in collaborative partnership or network(s). However, only one institution will be named as the recipient of funds in a partnership/network.

Eligibility characteristics for review must be clearly specified with appropriate documentation in the Application Requirements section of your application (see Application Content).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Establish and sustain networks or partnerships with health care providers and health care systems who have access to information on cases of childhood diabetes. Collaborate with other health organizations, community groups, State Health Department, Diabetes Control Programs etc., as necessary to accomplish program activities.

b. Establish a Steering Committee that will be the primary governing body of the study and will be comprised of each of the Principal Investigators from each center. The Steering Committee will have primary responsibility for developing manual(s) of operations and common study protocols, submitting the protocols for CDC and other Institutional Review Boards, and coordinating resolution of Institutional Review Board issues, facilitating the conduct of the study and on-going data collection, analyses, and reporting of study results.

c. Participate in the methodology and protocol development, on-going data collection and follow-up, quality control, data analysis and interpretation, the preparation of peer-reviewed publications, and presentation of findings.

d. Work cooperatively with the other Centers, and agree to follow the common protocol(s) and manual(s) of operations developed in Phase I of the study by the Steering Committee.

e. Maintain an effective and adequate management and staffing plan. Staff should have the education, background, and experience to successfully conduct the activities proposed in this application. As a part of the application, the existing staff and all proposed positions should to be included.

2. CDC Activities

a. Support the recipients' activities by collaborating and providing scientific and public health consultation and assistance in the development of activities related to the cooperative agreement and coordination sharing.

b. Assist in facilitating communication among recipients development of common multi-center protocol(s), quality control, interim data monitoring, data analysis, interpretation, reporting, and coordination.

c. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project, including CDC IRB.

d. Serve as a consultant to the Steering Committee.

E. Application Content

Competing Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections of the announcement and the Errata Sheet in the application to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The outcome of this program should provide reliable estimates of the prevalence, incidence and secular trends of the different types of childhood diabetes, and should enable the development of case definition and characterization at diagnosis and follow-up of the different types of childhood diabetes. More specifically, the following questions should be answered:

1. Using existing data of known prevalent cases of childhood diabetes, how could prevalent cases be classified, and what are the type-specific prevalence estimates and the characteristics (including medical care received) of the different types of childhood diabetes?

2. Based on the extensive collection of new data, how could incident cases of childhood diabetes be classified, and what are the accurate and precise population-based estimates of the type-specific incidence and secular trends, and the characteristics (including medical care received) of the different types of diabetes.

3. How could incident cases of childhood diabetes be followed in a uniform approach, and what are their characteristics, outcomes and quality of care at follow-up? How could a ''pool'' of incident cases be maintained for studying secular trends in incidence and factors associated with causation?

Emphasis should be on rigorous scientific approaches and methodologies that should yield access to populations of diverse ethnicity, socioeconomic status and insurance coverage, produce reliable population-based estimates that should adequately address ascertainment biases, and should assure sustainability to provide data for secular trend assessment and follow-up for the different types of childhood diabetes.

Each applicant must describe the proposed populations, the methodology and study designs that best address the objectives of this program, as well as the networks and partnerships that should help achieve these objectives. Applications should propose a uniform and multi-center approach, which considers the problem of racial/ethnic health disparities.

Collaborative protocol(s) to study the above questions should be developed by a Steering Committee composed of the recipients. The collaborative study protocol(s) should move into the implementation stage with the concurrence of the Steering Committee. It is not the intent of this Program Announcement to solicit elaborately detailed research plans for the above proposed collaborative project because the final protocol(s) should be collaboratively developed by the investigators during the planning phase (Phase I).

Eligibility characteristics must be clearly specified with appropriate documentation in the Application Requirements section of your application.

The application narrative must include the following sections in the order presented below:

a. Description and rationale of (a) the population source (including size, age, ethnicity, medical insurance status, socio-economic status, geographic), and

b. The partnership/network(s) which will provide access to information on the cases within this population source (not to exceed 5 pages).

(1) When describing the population source, indicate the degree to which racial and ethnic minority and socio-economically disadvantaged populations are included, and how the population is sufficiently typical of children with diabetes around the country or accurately represents special groups of children with the disease.

(2) When describing the partnership/network(s), detail the various types of providers which are included.

(3) Describe why and to what extent different types of childhood diabetes will be captured, and detail all (hospital and non hospital) data sources that will be used.

(4) Discuss how the population size (denominator) will be ascertained for estimation of incidence and secular trends over the 5 years of study.

(5) Discuss how the population-based estimates will be tested.

(6) Discuss how the networks/partnerships will be sustained over a long term to allow for trend estimates, follow-up, and maintenance of a ''pool'' of incident cases. Describe potential provider or patient incentives that may be used to assure sustainability and follow-up.

(7) Include a discussion of the rationale, benefits and problems that may be faced in relation to the selected population source and partnership/network(s) developed, and describe the extent to which the choice of the population source and the networks/partnerships is scientifically sound, realistic, and likely to provide reliable population-based estimates and secular trends for childhood diabetes.

c. Methodology: Case ascertainment, typology characterization, and follow-up of (a) the prevalent cases, and (b) the incident cases (not to exceed 5 pages).

(1) Describe why and how the previously collected data on prevalent cases of childhood diabetes will be available, and include a description of the case characteristics (including number, age, sex, ethnicity, medical insurance status or socio-economic status, geographic).

(2) Describe why and how information on a large number of incident cases of childhood diabetes (≥50 a year) will be available for each year of the study, and will approach complete ascertainment of diagnosed childhood diabetes in the population source. Describe various strategies to:

(3) Ascertain the prevalent and incident cases.

(4) Collect information to type and characterize the different prevalent and incident types of childhood diabetes.

(5) Follow the incident cases for characterization and maintenance of a ''pool'' of incident cases.

(6) Address potential for mis-classifications at baseline for prevalent and incident cases, and changes at follow-up for the incident cases, and other biases.

Note that characterization for (a) and (b) should include health care received, potential outcomes, and risk factor levels, and should use low-cost and realistic methods. Note that all proposed approaches should discuss cost implications (cost per case identified and cost per case maintained).

Also, note that emphasis should be on accurate estimation of incidence (to approach complete ascertainment of newly diagnosed childhood diabetes), as opposed to estimation of prevalence, which is based on previously collected information. It is not anticipated in this announcement that screening programs will be initiated to approach complete ascertainment of incidence, but if such screening programs are independently implemented, they may constitute a valuable addition to the present study.

d. Standardization across sites (not to exceed 1 page):

(1) Discuss how methods for identification and classification of childhood diabetes cases could be standardized across sites and over the study period;

(2) Discuss how the design and the standardization will ensure that maximum and wide use of the system will be made and sustained.

e. Background and experience of the principal investigator, co-investigators, and the applying institution, organization, or agency (not to exceed 3 pages).

(1) Describe the educational and professional background of the principal investigator.

(2) Document the relevant experience of the principal investigator and qualifications of the applying institution, organization, or agency for carrying out epidemiological or surveillance research in chronic disease (including access to computerized data systems and other relevant resources) and collaborative, multi-center research projects.

(3) Describe existing partnership/network(s) with other agencies/organizations/institutions or others (specifically, involvement in existing or past registries of type 1 diabetes or other similar systems designed for disease monitoring), and with supportive State Health Departments, Diabetes Control Programs, or other relevant organizations, for the purpose of relevant medical research.

(4) Attach evidence of collaborations and partnerships, specifying the commitment of the parties involved in partnership/networking(s), and provide details, including the terms of access to data and to populations and any specified limits to collaboration.

(5) Provide a brief description of how the project will be organized, and indicate the proposed staffing plan and expertise, and the time line.

f. Human Subjects. Address the requirements of Title 45 CFR 46 for the protection of human subjects, and detail the degree to which CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research are met. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Budget and budget justification (not to exceed 5 pages).

Provide a detailed, line-item budget with justification that demonstrates the request is consistent with the purpose and objectives of this program. The budget for Phase I of the study should be clearly delineated. Budgets should allow for approximately three persons, including the principal investigator, to attend Steering Committee and Subcommittee meetings. The detailed budget for Phase I should be planned and developed to assure that the project protocol may be written within the first nine months utilizing Steering Committee meetings and teleconference calls by the Steering.

Typing and Mailing

All pages must be clearly numbered and a complete index to the application and its appendixes must be included. Do not bind, staple, or paper clip any pages of any copy of the application, including appendixes. Do not include any bound documents (*e.g.,* pamphlets or other publications) in the appendixes. Do not include cardboard, plastic, or other page separators between the sections. The entire application must be typewritten, single-spaced, and in unreduced type (12-point fonts) on 8½″ x 11″ white paper, with at least 1″ margins, including headers and footers, and printed on one side only.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include the following information: The name and address of the applying institution, telephone number of the contact person, and the program announcement number.

The letter of intent must be submitted on or before, June 30, 2000,to the Grants Management Specialist, as identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of form PHS 398. Forms are available at the following Internet address: http://www.cdc.gov/od/pgo/forminfo.htm or in the application kit. Submit the application on or before July 21,2000, to the Grants Management Specialist identified in the section ''Where to Obtain Additional Information.''

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (Total 100 Points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description and rationale for the population and partnership/network(s) (25 points):

a. The extent to which (1) the population is described, (2) the rationale, benefits and problems that may be faced in relation to the population are discussed, and (3) the approach selected is scientifically sound, realistic, and likely to provide reliable population-based estimates and characterization of the different types of childhood diabetes. In particular, the extent to which data sources other than hospitalization data will be available.

b. The extent to which (1) the partnership/network(s) is described, (2) the rationale, benefits and problems that may be faced in relation to the partnership/network(s) are discussed, and (3) the network/partnership(s) selected are scientifically sound, realistic, and likely to provide reliable population-based estimates and characterization of the different types of childhood diabetes. In particular, the extent to which different types and sources of providers are available.

c. The degree to which (1) racial/ethnic minority and socio-economically disadvantaged populations and both sexes are included, (2) the population is sufficiently typical of children with diabetes around the country or accurately represents special groups of children with the disease, and (3) different types of childhood diabetes will be captured.

d. The extent to which the ascertainment of the population source and testing of the population-based estimates are scientifically sound, realistic, and likely to provide reliable and accurate population-based estimates and secular trends for childhood diabetes.

e. The extent to which the population and partnership/network(s) will be sustained over the study duration, and will allow for secular trends assessment, follow-up of incident cases, and maintenance of a ''pool'' of incident cases.

2. Rational for case ascertainment, typology, and characterization of prevalent cases (15 points):

a. The extent to which previously collected data on prevalent cases of childhood diabetes are described, and the size, characteristics, quality, and accessibility of this information.

b. The extent to which various strategies are described, and are sound, realistic, and feasible for case ascertainment.

c. The extent to which various strategies are described, and are sound, realistic, and feasible for collection of information to type and characterize the different types of childhood diabetes, and the extent to which characterization includes health care received, potential outcomes, and risk factor levels.

d. The extent to which various strategies are described, and are sound, realistic, and feasible for assessment of potential misclassifications, and other biases.

e. The extent to which low-cost and realistic methods are used, and cost implications are discussed (cost per case identified).

3. Rationale for the methodology, case ascertainment, typology, characterization, and follow-up of incident cases (25 points).

a. The extent to which information on a large number of incident cases of childhood diabetes (≥50 a year) is available and described, and will approach complete ascertainment of diagnosed childhood diabetes in the population source.

b. The extent to which various strategies are described and are realistic, feasible, and sustainable over 5 years for ascertainment of incident cases.

c. The extent to which (1) various strategies are described and are realistic, feasible, and sustainable over 5 years for collection of information to type and characterize the difference types of childhood diabetes, (2) characterization includes health care received, potential outcomes, and risk factor levels, and (3) potential mis-classifications at baseline, and changes at follow-up, and other biases are assessed.

d. The extent to which various strategies are described and are realistic, feasible, and sustainable over 5 years for follow-up of incident cases for

characterization, typology and maintenance of a ''pool'' of incident cases.

e. The extent to which low-cost and realistic methods are used, and cost implications (cost per case identified and cost per maintained) are discussed.

4. Standardization across sites (15 points):

a. The extent to which the proposed approach to childhood diabetes research is specific, realistic, time-phased, and suitable for development into a collaborative, multi-center study protocol.

b. The extent to which the applicant presents a detailed operational plan for initiating and conducting the project that clearly and appropriately addresses all Recipient Activities.

c. The extent to which applicant describes collaborations with other sites during the various phases of the project, and shows commitment to implement a standardized, multi-center, collaborative approach.

5. Background and Experience of the Principal Investigator and of the Applying Institution, Organization, or Agency (20 points):

a. The educational and professional background of the principal investigator, and the relevant experience of the principal investigator and qualifications of the applying institution, organization, or agency for carrying on epidemiological or surveillance research in chronic diseases (including access to computerized data systems and other relevant resources) or multi-center research projects.

b. Existence of partnership/network(s) with other agencies/organizations/institutions or others (specifically, involvement in existing or past registries of type 1 diabetes or other similar systems designed for disease monitoring), and with supportive State Health Departments, Diabetes Control Programs, or other relevant organizations, for the purpose of relevant medical research. Evidence that commitment of the parties involved in partnership/networking for this specific project is provided, including the terms of access to data and to populations, and any specified limits to collaboration for the purposes of this project.

c. The extent to which a brief description is provided on how the project will be organized, what the time line and the proposed staffing plan will be, and the extent to which the applicant clearly identifies specific assigned responsibilities and time commitment of all key professional personnel.

6. Human subjects (Not scored) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. Budget and Budget Justification (Not scored): The extent to which the budget is reasonable and consistent with the purpose and objectives of this program; and specification and discussion of cost per case identified, cost per case maintained, and cost per case type-classified.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of the following:

1. Progress reports (semiannual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) [42 U.S.C. 241(a) and 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.988.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Barry L. Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #00097, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2762, Email address bjc8@cdc.gov.

This and other CDC announcements can be found on the CDC homepage internet address: http://www.cdc.gov See Attachment II for background on the program. For program technical assistance, contact: Anne Fagot-Campagna, Division of Diabetes Translation, Centers for Disease Control and Prevention, 4770 Buford HWY, NE, Mailstop K–68, Atlanta GA, 30341, telephone number (770) 488–1053 (or –1069), Email address adf8@cdc.gov.

Dated: June 6, 2000.

Henry S. Cassel, III,

Deputy Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–14829 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00069]

Initiatives to Develop and Implement Programs to Enhance Epilepsy Public Awareness and Partnership, Education, and Communication; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the

availability of fiscal year (FY) 2000 funds for a cooperative agreement program with a national health organization to develop and implement programs to enhance epilepsy public awareness and partnership, education, and communication. Focus on these program areas stems from the results of Living Well with Epilepsy, the first national conference on public health and epilepsy, convened in September, 1997. Close collaboration among the public health, clinical, and advocacy communities represented at the conference resulted in the identification of priority epilepsy concerns including education, communication and improved public awareness.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Disability and Secondary Conditions. For the conference copy of ''Healthy People 2010,'' visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to conduct epilepsy programs to promote public awareness and partnerships, to provide epilepsy education for the general public and for health care providers; and to develop and enhance communication channels to allow for improved interaction and information sharing among those with epilepsy and their families, as well as those who advocate for persons with epilepsy and those who provide care and services for persons with epilepsy, researchers, public health specialists, and the general public.

B. Eligible Applicants

Assistance will be provided only to a private, non-profit 501(c)(3) organization that is a national voluntary health organization dedicated to assisting persons with epilepsy. Eligible applicants must have established working relationships with affiliate chapters and other agencies and organizations concerned with epilepsy on a national basis in order to expand epilepsy public awareness and public and provider education about epilepsy. Eligibility status must be documented in the Executive Summary section of the application. Applications which are determined to be ineligible will not be reviewed and will be returned to the applicant.

Limited competition is justified under this program announcement because of the need to encourage and enhance public health initiatives in the field of epilepsy as directed by the Congressional appropriation committees for FY 2000. Specifically, the Conference Report accompanying Public Law 106–113 (H.R. 3194), Consolidated Appropriations Act 2000, found at H.R. Rep. No. 106–479, at 599 (1999) directed CDC to expand epilepsy surveillance, public awareness activities, and public and provider education. Furthermore, the Senate and House Appropriations Committees encouraged CDC to partner with a National voluntary health organization dedicated to assisting persons with epilepsy in implementing public health initiatives related to epilepsy.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000.00 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. The funding estimate may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

A funding preference will be given to a national voluntary health organization having a nationwide network of affiliates covering all Department of Health and Human Services (DHHS) regions including the Commonwealth of Puerto Rico in order to provide broad geographical coverage for the dissemination of epilepsy programs.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

The applicant must propose activities in one or more of the following three priority areas listed below. If research activities are proposed, the applicant should discuss the potential involvement of human subjects and document how CDC human subject requirements will be met.

a. Partnership Building

(1) Develop mechanisms to provide financial and personnel support to epilepsy affiliates/chapters to facilitate building collaborative public health partnerships with state and local health departments.

(2) Develop mechanisms to provide financial and personnel support to health related organizations (other than epilepsy affiliates/chapters) to facilitate building collaborative partnerships.

(3) Develop ongoing communication vehicles (i.e., listservs, web sites, newsletters, conference calls, meetings) to facilitate problem solving and idea sharing among organizations involved in collaborative activities to implement programs to promote public awareness of epilepsy, provide education for those with epilepsy, the general public and for health care providers, and enhance communication channels.

b. Create Awareness/Improve Health Communications

(1) Implement a sustained multifaceted media relations outreach program.

(2) Develop, implement and evaluate strategies to broaden dissemination of existing educational materials, particularly those that focus on teens with epilepsy, to those with epilepsy who are under served.

c. Consumer and Provider Education

(1) Develop or adapt, evaluate, and disseminate low-literacy epilepsy education materials; and/or educational materials for large minority groups (e.g., Hispanic, Asian, American Natives, African American).

(2) Develop, evaluate, and disseminate epilepsy self-management materials delivered through traditional and/or alternative delivery mechanisms (i.e., Internet-based, CD ROM, other).

(3) Develop appropriate training on selected epilepsy interventions with demonstrated cost-effectiveness with appropriate experts including international organizations.

(4) Develop, evaluate, and disseminate continuing medical education (CME) or CME and continuing education units (CEU) granting self study professional education through alternative delivery mechanisms (i.e., Internet based, CD-ROM).

2. CDC Activities

a. Collaborate in planning, implementing, and evaluating strategies and programs.

b. Assist in the analysis and interpretation of the evaluation phase of projects or programs.

c. Provide programmatic consultation and guidance in support of the program.

d. Assist in the planning and implementation of linkages with local, national, or international epilepsy organizations or agencies.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applicant is required to submit an original and two copies of the application. The application, excluding appendices, should not exceed 30 pages. Pages should be clearly numbered and a complete index to the application and any appendices should be included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type on 8–1/2″ by 11″ paper, with at least 1″ margins, headers and footers, and printed on one side only. The application should be organized in the following sections.

1. Executive Summary

Provide a clear, concise, and objectively written statement of the major objectives and components of proposed activities, proposed time frame, and evaluation plan. Document your organization's national network by providing a list of your affiliate locations. Also, include proof of your non-profit status.

2. Existing Resources and Needs Assessment

Describe the documented need for the proposed activities and current activities that provide relevant experience and expertise to perform the proposed activities.

3. Collaborative Relationships

Describe collaborative relationships with other agencies and organizations that will be involved in the proposed activities.

4. Operational and Evaluation Plan

Describe the specific outcome and process objectives for each proposed project with deliverables clearly identified, the major steps required to achieve the objectives, and a projected timetable for completion that displays dates for the accomplishment of specific proposed activities. Describe how achievement of outcome and process objectives, and program effectiveness will be evaluated.

5. Management and Staffing Plan

Describe how the program will be effectively managed including:

(a) Management structure including the lines of authority and plans for fiscal control.

(b) The staff positions responsible for implementation of the program.

(c) Qualifications and experience of the designated staff.

6. Budget and Justification

Provide a detailed budget request and line-item justification of all proposed operating expenses.

F. Submission and Deadline

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189) to the Grants Management Specialist identified in the Section J., ''Where to Obtain Additional Information.'' The application deadline date is July 7, 2000.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private, metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Resources and Needs Assessment: (25 points)

The relevance of the needs assessment and extent to which the applicant demonstrates that current activities provide experience and expertise for the proposed projects.

2. Collaboration: (15 points)

The extent to which the applicant provides evidence of collaborative relationships with other agencies and organizations relevant to successful completion of the proposed projects. The extent to which the applicant documents their nationwide affiliate network.

3. Proposed Operational and Evaluation Plan: (35 points)

The extent to which the applicant clearly identifies the specific outcome and process objectives for the proposed projects, deliverables, and the major steps required to meet the objectives; provides a realistic plan for involving others in the project; and proposes an evaluation plan that is likely to provide meaningful information about the achievement of the projects.

4. Proposed Implementation Schedule: (10 points)

The extent to which the projected timetable for completion of tasks and for meeting objectives is reasonable and realistic.

5. Project Management and Staffing Plan: (15 points)

The extent to which the applicant demonstrates management structure and staff positions with clear lines of authority and plans for fiscal control, and that designated staff have appropriate qualifications and experience. If applicable, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Budget: (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the proposed program objectives and activities.

7. Human Subjects Research (Not Scored)

If applicable, does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements:

Provide CDC with an original plus two copies of:

1. semiannual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J., ''Where to Obtain Additional Information.''

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR 1 Human Subjects Requirements
AR 2 Requirements for Inclusion of Women and Racial and Ethic Minorities in Research
AR 10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the sections 301(a) and 317(k)(2) the Public Health Service Act, [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The Catalogue of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Barry Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 00069, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone (770) 488–2762, E-mail: bjc8@cdc.gov.

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on Funding then click on Grants and Cooperative Agreements.

For program technical assistance, contact: Mike Waller, Centers for Disease Control and Prevention, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway NE, Atlanta, GA, 30341–3717, Telephone: (770) 488–5264, E-mail: mnw1@cdc.gov.

Dated: June 6, 2000.

Henry S. Cassel III,

Deputy Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–14832 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00062]

Postdoctoral Fellowship Training Program in Infectious Diseases; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2000 funds for a cooperative agreement program for Postdoctoral Fellowship Training Programs in Infectious Diseases was published in the **Federal Register** on June 7, 2000, [Vol. 65, No. 110, Pages 36145–36148]. The notice is amended as follows:

On page 36147, Second Column, Under Section F. Submission and Deadline, Letter of Intent (LOI), change to read the ''In order to assist CDC in planning the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to submit an LOI to inform CDC of their intention to do so on or before June 23, 2000. Also, on page 36147, Second Column, Under Section F. Submission and Deadline, Application, change to read: On or before Friday, July 7, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Dated: June 7, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14834 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01007]

Grants for Injury Control Research Centers; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for Injury Control Research Center (ICRC) grants. This program addresses the ''Healthy People 2010'' priority areas of Injury Prevention, Unintentional Injury Prevention, and Violence and Abuse Prevention. For the conference copy of ''Healthy People 2010,'' visit the Internet site: http://www.health.gov/healthypeople.

The purposes of this program are:

1. To support injury prevention and control research on priority issues as delineated in: Healthy People 2010; Injury Control in the 1990's: A National Plan for Action; Reducing the Burden of Injury: Advancing Prevention and Treatment; Injury in America; Injury Prevention: Meeting the Challenge; Cost of Injury: A Report to the Congress; and any list of research priorities published by the National Center for Injury Prevention and Control (NCIPC);
2. To integrate, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively;
3. To support the identification and description of injury problems, to identify risk and protective factors that can be used to design and test injury prevention and control strategies, to evaluate current and new interventions for the prevention and control of injuries, and to support the implementation of effective prevention and control strategies in the public and private sector; and
4. To provide technical assistance to injury prevention and control programs within a geographic region.

B. Eligible Applicants

This announcement will provide funding for applicants in regions which do not have funded Injury Control Research Centers (ICRCs) and for applicants in regions which have funded centers which must re-compete for funding.

Eligible applicants include all nonprofit and for-profit organizations in

Regions 1, 2, 5, 6, 7, 8, and 9. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Non-academic applicant institutions should provide evidence of a collaborative relationship with an academic institution.

Eligible applicants are limited to organizations in Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), Region 2 (New Jersey, New York, Puerto Rico, and Virgin Islands), Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Region 7 (Iowa, Kansas, Missouri, and Nebraska), Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), and Region 9 (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Mariana Islands, Marshall Islands, Micronesia, and Palau).

Note: ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $3,622,000 is expected to be available in FY 2001 to fund approximately four awards. It is expected that the average award will be $905,500 (total of direct and indirect costs). It is expected that the awards will begin on or around September 1, 2001, and will be made for a 12 month budget period within a project period of up to five years. Applications that exceed the funding cap of $905,500 will be excluded from the competition and returned to the applicant. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Center funding is to be designated for two types of activities. One type of activity is considered ''Core'' and includes administration, management, general support services (*e.g.* statistical, library, media relations, and advocacy) as well as activities associated with research development, technical assistance, and education (e.g. seed projects, training activities, and collaborative and technical assistance activities with other groups). Funds may be allocated for trainee stipends, tuition remission, and trainee travel, in accordance with the current rates for the Public Health agencies. Indirect costs for these trainee-related activities are limited to 8.0 percent. Defined research projects constitute the second type of activity, and ICRCs are encouraged to work toward addressing the breadth of the field. Core activities and defined research projects may each constitute between 25 percent–75 percent of the operating budget and should be balanced in such a way that the ICRC demonstrates productivity in research as well as teaching and service. Applicants with less demonstrated expertise in research are encouraged to devote a larger percentage of funds to defined research projects in order to establish their capability as research centers of excellence.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Funding Preferences

Funding preference will be given to re-competing ICRCs. These centers represent a long term investment for NCIPC and an established resource for Injury Control related issues for their States and regions.

D. Program Requirements

The following are applicant requirements:

1. Applicants must demonstrate expertise and conduct research projects in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and are encouraged to be comprehensive.
2. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.
3. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, *e.g.*, dean of a school, vice president of a university, or commissioner of health. The director must have no less than 30 percent effort devoted solely to this project with an anticipated range of 30 percent—50 percent.
4. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.
5. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.
6. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs. An ICRC is encouraged to involve biomechanicists in its research. This, again, may be achieved through collaborative relationships as it is not a requirement that all ICRCs have biomechanical engineering expertise.
7. Applicants must have established curricula and graduate training programs in disciplines relevant to injury control (*e.g.*, epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).
8. Applicants must demonstrate the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.
9. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the region in which the ICRC is located. Cooperation with private-sector programs, *e.g.* ''Safe USA'' partnerships, is encouraged.
10. Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, *e.g.*, minority communities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications should include the following information:

1. Face page
2. Description (abstract) and personnel

3. Table of contents

4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant. In addition, separate budgets (direct and indirect costs) and justifications should be provided for the following categories of activities:

a. Core activities, including management and administrative functions, other non-research activities (e.g. education/training, consultation, technical assistance, translation/dissemination, program and policy development and evaluation, advocacy, and media activities, etc.), and small seed projects of less than $15,000 for a one year period or less.

b. Research Studies:

(1) Small studies of $15,000–75,000 for each, of one to three years duration. These projects might be expansions of seed projects, either further developing methods or hypotheses in preparation for a larger investigation leading to the submission of an RO1 level proposal, or may be stand-alone investigations sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(2) Larger scale studies with annual budgets exceeding $75,000 and lasting up to five years. These projects typically will test hypotheses and employ more sophisticated methodologies and/or larger sample sizes than small studies.

For seed projects, only modest descriptions are required within the application and/or clear definition of procedures used to select the projects. More detailed descriptions, commensurate with costs, are required for both small studies and larger scale projects.

5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.

6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.

7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.

8. Resources and environment.

9. Research plan:

a. ICRCs are to develop a range of research and other non-research activities that are designed to advance the field of injury control through development of new scientific or surveillance methods, creation of new knowledge, and translation of knowledge into training, program and policy development and evaluation activities or other applications that will ultimately reduce injuries or their effects. ICRC applications should articulate how the activities of their program are integrated with each other so as to demonstrate the whole of the ICRCs activities and their potential impact.

b. A detailed research plan (design and methods) including hypothesis and expected outcome, value to field, and specific, measurable, and time-framed objectives consistent with the activities for each project within the proposed grant.

(1) Seed projects require a short write up describing the injury control context of the study, the objective, the design, the setting and participants, the intervention being addressed, main outcome measurements, expected results, time lines, cost (direct and indirect), and plans for translation/dissemination, and/or clear definition of procedures used to select the projects.

(2) Small research projects require a 10–15 page write up describing the accomplishment of all the steps, including the development and testing of methods, the instruments, and the collection of preliminary data, needed to take an innovative approach and develop it to the level of a larger investigation leading to the submission of an RO1 level proposal or a stand-alone investigation sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large research projects require an RO1 level write up as described in the PHS 398 (Rev. 4/98) guidelines and should be included as appendices of the application.

(4) A detailed evaluation plan which should address outcome and cost-effectiveness evaluations as well as formative, efficacy, and process evaluation.

Include in the narrative for each small research project and large project in the research plan section of the application:

(1) Title of Project

(2) Project Director/Lead Investigator

(3) Institution(s)

(4) Categorization as to ''Prevention, Acute Care, Rehabilitation, or Biomechanics''

(5) Categorization as to ''Seed Project, Small Project, or Large Project''

(6) Categorization as to ''New or Ongoing Project''

(7) Cost/Year (Direct and Indirect)

(8) Research Training? Names, Degrees of Persons Trained or in Training

(9) Key Words

(10) Brief Summary of Project including Intended Application of Finding (Abstract)

c. A description of the core faculty and its role in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRCs objectives.

d. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part, and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center or the project, both structurally and operationally. ICRC directors should report to an appropriate organizational level (*e.g.* dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activities and ensuring oversight of the process of interdisciplinary activity.

e. Documentation of the involved public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925–0001)and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before November 1, 2000, submit the application to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria in (1.) or (2.) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

1. Review by the Injury Research Grants Review Committee (IRGRC)

Initial peer review of ICRC grant applications will be conducted by the IRGRC, which will recommend the application for further consideration or not for further consideration. For those applications recommended for further consideration, a team of peer reviewers, including members of the IRGRC, will conduct on-site visits at each applicant institution, generate summary statements for the visits, and report its assessment to the IRGRC.

Factors to be considered by the IRGRC include:

a. The specific aims of the application, e.g., the long-term objectives and intended accomplishments. Approval of research projects (including new research projects proposed during the five year funding cycle) is subject to peer review.

(1) Seed projects will be evaluated collectively on the mechanism for solicitation of projects, on the technical/scientific merit review, and on the selection and monitoring of projects.

(2) Small projects will be evaluated individually on the innovative approach and proposed methods for achieving an investigation sufficient to support a submission of an RO1 level proposal and/or worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large projects will be evaluated individually according to existing RO1 level project standards as described in the PHS 398 (Rev. 4/98) guidelines. An application must have a minimum of three large research projects approved in order to be recommended for further consideration.

b. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

c. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated application objectives.

d. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

e. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

f. In addition to conducting defined research projects, ICRCs are expected to devote substantial attention to activities directed at advancing the field through other activities that are designed to improve research capabilities and translate research into practice. Examples of such activities include consultation and technical assistance that are responsive to regional and state priorities, professional training for researchers and practitioners, program development, and evaluation endeavors. The degree of effort devoted to these aspects of an ICRCs program should be clearly stated in the justification and the budget. The degree of effort may be varied and should reflect the specific focus and goals of the ICRC.

g. Details of progress in the most recent funding period should be provided in the application if the applicant is submitting a re-competing application. Documented examples of success include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; ongoing provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

h. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

i. Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research?

j. Does the application adequately address the requirements of the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions?'

2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of ICRC grant applications will be conducted by the Science and Program Review Work Group (SPRWG) of the ACIPC. The SPRWG consists of ACIPC members, Federal ex officio participants, and organizational liaisons. The Federal ex officio participants will be responsible for identifying proposals in overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided. The NCIPC Division Associate Directors for Science (ADS) or their designees will address the SPRWG to assure that research priorities of the announcement are understood and to provide background regarding current research activities. These recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRWG. The ACIPC will vote to approve, disapprove, or modify these recommendations for funding consideration.

These recommendations, based on the results of the review by the IRGRC, the relevance and balance of the proposed research relative to the NCIPC programs and priorities, and the assurance of no duplication of federally-funded research, are presented to the Director, NCIPC, for funding decisions.

Factors to be considered by the ACIPC include:

a. The results of the peer review.

b. The significance of the proposed activities as they relate to national

program priorities, geographic balance, and the achievement of national objectives.

c. The overall balance of the ICRC program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics, epidemiology, and behavioral science).

d. Budgetary considerations. The ACIPC will recommend annual funding levels as detailed under the heading, Availability of Funds.

3. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly work plans are being met;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. progress report annually;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application kit.

AR–1 Human Subjects Certification

AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

AR–20 Conference Activities within Grants/Cooperative Agreements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 391, 392, 393, and 394 of the Public Health Service Act, [42 U.S.C. 241, 280b, 280b–1, 280b–1a, and 280b–2] as amended. Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

For this announcement and other CDC announcements, see the CDC home page on the Internet: http://www.cdc.gov.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. A complete program description and information on application procedures are contained in the application package.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Colgate Building, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone 770–488–2717, Internet address: jcw6@cdc.gov

Programmatic assistance may be obtained from: Tom Voglesonger, Program Manager, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (K58), Atlanta, GA 30341–3724, Telephone 770–488–4265, Internet address: tdv1@cdc.gov.

Please refer to Announcement 01007 when requesting information and submitting an application.

Dated: June 7, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14831 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research: Conference Call 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 conference call meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER), Subcommittee for Management Review of the Chernobyl Studies (SMRCS).

Time and Date: 1 p.m.–1:30 p.m., June 26, 2000.

Place: The conference call will originate at the National Center for Environmental Health (NCEH), CDC, in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: This subcommittee is charged with providing guidance to the scientific reviewers and staff, and reporting back to the full ACERER on the charge from the Department and Congress to assess the management, goals, and objectives of the National Cancer Institute Chernobyl studies.

Matters To Be Discussed: The conference call agenda is to reach consensus on the review and report submitted by the SRMCS.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 1 p.m., Eastern Time. To participate in the conference call, please dial 1–877–322–9654 and enter conference code 970943. You will then be automatically connected to the call.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Executive Secretary, ACERER, and Acting Deputy Director, NCEH, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7002, fax 770/488–7015.

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–14945 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–6:30 p.m., June 21, 2000. 8 a.m.–4:30 p.m., June 22, 2000.

Place: Four Points Hotel by Sheraton, 1850 Cotillion Drive, Atlanta, Georgia 30338.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include a discussion on the ACIP policies and procedures; ACIP recommendations for the pneumococcal conjugate vaccine; vaccine additive: aluminum update; vaccine additive: thimerosal; vaccines and autism; bioterrorism working group; general recommendations; anaphylaxis after MMR due to gelatin; progress report on vaccine identification standards initiative; status of high-speed needle-free jet injectors for mass vaccination campaigns; update on Geneva meeting on rotavirus vaccination; Vaccines for Children program update; adult working group: pneumococcal polysaccharide update; CDC/FDA report on two dose schedule for hepatitis B for adolescent; update on influenza vaccine supply; Global Alliance for Vaccines and Immunization: progress in supporting global immunization programs and introduction of new vaccines; Nabi an update from the Food and Drug Administration; update from the National Center for Infectious Diseases; update from the National Immunization Program; update from the Vaccine Injury Compensation Program; update from the National Vaccine Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

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: June 8, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–14944 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0412]

Rajaram K. Matkari; Conviction Reversal; Final Order Terminating Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order, under the Federal Food, Drug, and Cosmetic Act (the act), terminating the debarment of Rajaram K. Matkari, 1304 Riverglen Way, Berthoud, CO 80513. FDA is issuing this order because the U.S. District Court for the District of Maryland issued a Writ of Error Coram Nobis, reversing Mr. Matkari's conviction and Mr. Matkari applied for termination of his debarment on this basis.

EFFECTIVE DATE: June 13, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 20, 1993 (58 FR 54156), Rajaram K. Matkari was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(dd)). The debarment was based on FDA's finding that Mr. Matkari was convicted of a felony under Federal law for conduct relating to the development or approval of a drug product, or otherwise relating to the regulation of a drug product (section 306(a)(2)(A) and (a)(2)(B) of the act). Mr. Matkari, the former Vice President for Regulatory Affairs and Product Development of Pharmaceutical Basics, Inc. (PBI), pled guilty to and was sentenced on July 28, 1989, for giving an unlawful gratuity, a felony offense under 18 U.S.C. 201(c)(1)(A). The basis for this conviction was Mr. Matkari's payment of approximately $2,000 to an FDA chemistry review branch chief who was responsible for supervising the chemists who reviewed PBI's applications to determine whether those applications met certain statutory standards for approval.

On February 22, 2000, the U.S. District Court for the District of Maryland issued an order granting Mr. Matkari's petition for a Writ of Error Coram Nobis in his criminal case. A copy of the court's order is available in Docket No. 92N–0412. By this order, the court reversed Mr. Matkari's conviction. On April 18, 2000, Mr. Matkari petitioned for termination of debarment under section 306(d)(3)(B)(i) of the act, as amended by the Generic Drug Enforcement Act. Section 306(d)(3)(B)(i) of the act states that ''If the conviction which served as the basis for the debarment of an individual under subsection (a)(2) * * * is reversed, the Secretary shall withdraw the order of debarment.''

Accordingly, the Senior Associate Commissioner for Policy, Planning, and Legislation, under section 306(d)(3)(B)(i) of the act and under authority delegated to him (21 CFR 5.20), is issuing this order withdrawing the order of permanent debarment of Rajaram K. Matkari, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application. Rajaram K. Matkari's debarment is terminated

effective June 13, 2000, (section 306(d)(3)(B)(i) of the act).

Dated: June 6, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–14806 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–1332]

Ecolab, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ecolab, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on red meat carcasses.

DATES: Submit written comments on the petitioner's environmental assessment by July 13, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4720) has been filed by Ecolab, Inc., Ecolab Center, 370 Wabasha St., St. Paul, MN 55102. The petition proposes to amend the food additive regulations in 21 CFR part 173 (21 CFR part 173) to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on red meat carcasses.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch written comments by July 13, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 30, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–14906 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 26 and 27, 2000, 8:30 a.m. to 5:30 p.m.

Location: Marriott Washington Center, Ballrooms A through E, 9751 Washington Blvd., Gaithersburg, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6758, e-mail at PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12538. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 26, 2000, the committee will discuss new drug application (NDA) 21–200, Zelmac™ (tegaserod), Novartis Pharmaceuticals Corp., for the treatment of abdominal pain and discomfort, bloating and altered bowel function in patients with irritable bowel syndrome who have predominant symptoms of pain, discomfort, and constipation. On June 27, 2000, the committee will discuss risk management of post-marketing adverse events associated with NDA 21–107, Lotronex™ (alosetron) Glaxo Wellcome.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 19, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 19, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the June 26 and 27, 2000, Gastrointestinal Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Gastrointestinal Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 5, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14805 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

White House Initiative on Asian Americans and Pacific Islanders President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to conduct a public meeting by videoconference during the month June 2000.

Name: President's Advisory Commission on Asian Americans and Pacific Islanders (AAPIs).

Date and Time: June 26, 2000; 4:00 p.m.–6:00 p.m. EST.

The meeting is open to the public.

The President's Advisory Commission on AAPIs will conduct a public meeting by videoconference on June 26, from 4:00 p.m. to 6:00 p.m. EST inclusive. The meeting is open to the public; however, teleconference lines are limited. Please call Mr. Tyson Nakashima at (301) 443–2492, if you are interested in participating in the call and to obtain the dial-in number. Agenda items will include, but will not be limited to: Approval of May Commission Meeting minutes; reports from subcommittees; administrative tasks; deadlines; and the upcoming Town Hall and Commission meetings.

The purpose of the Commission is to advise the President on the issues facing Asian Americans and Pacific Islanders (AAPIs). The President's Advisory Commission on AAPIs will be seated through June 7, 2001.

Requests to address the Commission should be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to (301) 443–0259. Anyone who has interest in joining any portion of the meeting or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD, 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than June 19, 2000.

Dated: June 6, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–14807 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General; Program Exclusions: May 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AKIN, CHARLES PHILIP, RAFTWOOD, TX	06/20/00
AKOPYAN, GEVORK, LOS ANGELES, CA	06/20/00
AKOPYAN, DANIEL, SAN DIEGO, CA	06/20/00
BRIKER, RUSLAN, BROOKLYN, NY	06/20/00
BRITTAIN, RICHARD E JR, MANCHESTER, KY	06/20/00
CARABELLA, ROBERT, MANCHESTER, KY	06/20/00
CHARLES, JOSEPH N, BROOKLYN, NY	06/20/00
CHASSEREAU, DANIEL, EHRHARDT, SC	06/20/00
COLLIER, JORDYCE A, MEDFORD, OR	06/20/00
CORN, JOANN, DENVER, CO	02/14/99
CROW, DONNA M, SHENANDOAH, IA	06/20/00
DINE, THEODORE SR, N SYRACUSE, NY	06/20/00
DISHON, LORI A, BALTIMORE, MD	06/20/00
DOBY, KIMBERLY M, DENVER, CO	06/20/00
DOVALINA, ELSA, EAGLE PASS, TX	06/20/00
DURAND, DEVIN, ENCINITAS, CA	06/20/00
DURANONA, RAFAEL ECHAVARRIA, MIAMI, FL	06/20/00
EKIZYAN, OGANES, LOS ANGELES, CA	06/20/00
ELIZALDE, MARIA ROSA, MIAMI, FL	06/20/00
EMBRIANO, PETER J, SOMERS, CT	07/28/98
GARNER, WILMA J, BALTIMORE, MD	06/20/00
GODZHOYAN, ARPINE, LOS ANGELES, CA	06/20/00
GONZALEZ, WILFREDO, MIAMI, FL	06/20/00
GOODBODY, JOHN P, WEBSTER, NY	06/20/00
HERAVI, BIJAN, LOS ANGELES, CA	06/20/00
HERNDON, PATRICIA SUE, ENID, OK	06/20/00
ILYAS, ZAHID, EDISON, NJ	06/20/00
KIDS CHARIOT, INC, COLORADO SPRNGS, CO	06/20/00

Subject, city, state	Effective date
KIESTLER, TED JAMES, SPANAWAY, WA	06/20/00
LAYMON, ELIZABETH CAROLINE, MIAMI, OK	06/20/00
LLOYD, BRUCE, MARLBOROUGH, MA	12/08/98
MALOFF, HAROLD, ROSLYN, NY	06/20/00
MARRAZZO, DEAN A, JESSUP, PA	06/20/00
MARTINEZ, MELCHOR, WHITEHALL, PA	06/20/00
MASTERSON, MARK, SANTA ROSA, CA	12/02/99
MENDEZ-CANTU, BLANCA, EAGLE PASS, TX	06/20/00
MIZNER, JAMES J JR, STANTON, VA	06/20/00
MOHAMEDOLWAN, TAMGID TAWFIK, FISHKILL, NY	06/20/00
NAKASHIMA, MELVIN K, EL MONTE, CA	06/20/00
PALEZYAN, RICHARD, BURBANK, CA	06/20/00
PARIKH, PRADIPKUMAR, N WOODMERE, NY	06/20/00
PERGLER, RICHARD R, CRYSTAL LAKE, IL	06/20/00
PICKLES, HOMER LEE JR, GRAND PRAIRIE, TX	06/20/00
POETOEHENA, MARCEL RUDOLF J II, LONG BEACH, CA	06/20/00
RESNICK, LIONEL, MIAMI BEACH, FL	06/20/00
RHYNES, RUSHANDRA C, EMERSON, AR	06/20/00
ROBERTS, LESLIE M, NEEDHAM, MA	06/20/00
ROLLINS, CLEN, WINNSBORO, LA	06/20/00
ROSENBERG, JEROME, GREAT NECK, NY	06/20/00
SAPO, IGOR, EL MONTE, CA	06/20/00
SEIBS, BRENDA K, PINE BLUFF, AR	06/20/00
SHARMA, YOGENDRA, ROBBINSVILLE, NJ	06/20/00
SHERANI, TAHIR, S ORANGE, NJ	06/20/00
SPENCER, DENIS EDWIN, TUSTIN, CA	09/28/99
SPRUILL, TRACIE LEE, WESTBURY, NY	06/20/00
STEINHOUSE, NATAWADEE, DANBURY, CT	06/20/00
STIMPSON, JERRY LINWOOD, IDAHO SPRINGS, CO	06/20/00
TASLAGIAN, MOVSES, RESEDA, CA	06/20/00
THORNTON, RAYMOND LEIGH, COLORADO SPRNGS, CO	06/20/00
TOKADJIAN, STEPHAN, LOS ANGELES, CA	06/20/00
VAZQUEZ, MARIA DEL CARMEN, N MIAMI, FL	06/20/00
VAZQUEZ, JAKELINE, HIALEAH, FL	06/20/00
VUONG, VU DINH, LOMPAC, CA	06/20/00
WADDELL, CHARLES M, MARIETTA, GA	06/20/00
WELLS, GREGORY D, ASHLAND, KY	06/20/00
WILLIAMS, PAUL W JR, GRAND COTEAU, LA	06/20/00
WONGUS, ROSALIE, BALTIMORE, MD	06/20/00
WOODS, GENE MICHAEL, ELKTON, OH	06/20/00
ZANDER, PAUL D, LOS ANGELES, CA	11/03/99
FELONY CONVICTION FOR HEALTH CARE FRAUD	
FRIDAY, DAVID, WAYNE, PA	06/20/00
GETHNER, STUART MICHAEL, PARADISE VALLEY, AZ	06/20/00
KEHRIG, TIMOTHY, ST CLAIRE, MI	06/20/00
KERAK, JOEL, DOYLESTOWN, PA	06/20/00
ROACH, SHEILA ANN, PHILADELPHIA, PA	06/20/00
SOBEL, PATRICIA M, PHILADELPHIA, PA	06/20/00
VANDERMUELLEN, RONALD, PHILADELPHIA, PA	06/20/00
FELONY CONTROL SUBSTANCE CONVICTION	
BOYD, KIMBERLY S, PIQUA, OH	06/20/00
BRAKE, TERESA A, CLEVELAND, OH	06/20/00
ESTRELLA, DAVID, BROOKLYN, NY	06/20/00
SLOVER, ROBERTA HARTMAN, REHOBOTH BEACH, DE	06/20/00
TIMMONS, LYNETTE DAWN, SAN DIEGO, CA	06/20/00
PATIENT ABUSE/NEGLECT CONVICTIONS	
ANGELES, ROMEO TAYAG, SAN DIEGO, CA	06/20/00
ANGRISANO, LISA, BLASDELL, NY	06/20/00
BETTGER, ROBIN D, NEWARK, OH	06/20/00
BLASER, EILEEN M, HUDSON, IA	06/20/00
BRINKLEY, RACHEL ELIZABETH, GAINESVILLE, TX	06/20/00
BROWN, JEFFREY D, ST CHARLES, MN	06/20/00
CARDENAS, RAMON ALBERTO, CANOGA PARK, CA	06/20/00
CARDILLO, JO-ANN, COVENTRY, RI	06/20/00
CAREY, HELEN N, COLUMBUS, OH	06/20/00
CLARK, TREVOR DALE, STRATFORD, OK	06/20/00
CRAWFORD, CAROLYN, PICKENS, MS	06/20/00

Subject, city, state	Effective date
CROSS, RICHARD D, HARVEY, IL	06/20/00
DECKER, ROBERT E, ROME, NY	06/20/00
DENNIS, MARIE, LAS VEGAS, NV	06/20/00
EALY, OLA M, CONWAY, AR	06/20/00
ELANZO, ELANZO, ENID, OK	06/20/00
FIELD, JOYCE MARIE, REDDING, CA	06/20/00
FOREE, BONNIE F, FRUITA, CO	06/20/00
GILLEYLEN, ELIZABETH, ABERDEEN, MS	06/20/00
GLASCO, ALFONZA, BOYDTON, VA	06/20/00
GRIFFITH, NICOLE A, MAGEE, MS	06/20/00
GUEVARA, SARAH M, MIAMISBURG, OH	06/20/00
HARNEY, DUANE A, PERKINS, OK	06/20/00
HARRIS, PATRICIA ANN, MALVERN, AR	06/20/00
HAYGOOD, ASHLEY BRENT, OKLAHOMA CITY, OK	06/20/00
HOLLOWAY, JANICE, LONG BEACH, MS	06/20/00
HOWLAND, NATHAN HENRY III, TENNESSEE COLONY, TX	06/20/00
HUNTER, TRACY, CANTON, MS	06/20/00
JACOBS, RODERICK DEWAYNE, BUNKIE, LA	06/20/00
JEFFERSON, PATRICIA R, DAYTON, OH	06/20/00
JOHNSON, LEANIER MONTEZ, COLUMBIA, SC	06/20/00
KIM, SUN CHOONG, MAHANOY CITY, PA	06/20/00
KING, GREGORY BRUCE, POTEAU, OK	06/20/00
KROMRIE, BRENDA SUE, FARNHAMVILLE, IA	06/20/00
KURBAN, HAKAN, RUTHERFORD, NJ	06/20/00
LEE, RANDOLPH DERAL, SHREVEPORT, LA	06/20/00
LEWIS, DONNIE SR, MALVERN, AR	06/20/00
MARTIN, KEITH D, LITTLE ROCK, AR	06/20/00
MAY, DEBORAH L, GALESBURG, IL	06/20/00
MCNEILL, MELODIE, LOMPOC, CA	06/20/00
MILLER, PATRICIA, PEKIN, IL	06/20/00
MOLHO, DAVID, SCARSDALE, NY	06/20/00
OCAMPO, GEORGE, SYLMAR, CA	06/20/00
ODOM, JACQUELINE, BATON ROUGE, LA	06/20/00
OLAH, SANDOR L, HAMILTON, MI	06/20/00
ORANO, LOURDES V, STERLING HGTS, MI	06/20/00
PENN, MICHAEL ADAM, ADDISON, TX	06/20/00
POWELL, CELESTINE, KEWANEE, IL	06/20/00
REED, PAMELA A, DECATUR, IL	06/20/00
RUDOLPH, JANE M GUNSELMAN, FLORENCE, AL	06/20/00
SANTIAGO, TEOFILA C, CANOGA PARK, CA	06/20/00
SCHEIBE, MELISSA LYNN, BALTIMORE, MD	06/20/00
SEAL, SHIRLEY ANN, OKLAHOMA CITY, OK	06/20/00
SEALS, SANDRA LYNN, CANTON, MS	06/20/00
SHARMA, RAGENDRA C, KALAMAZOO, MI	06/20/00
SHEPHERD, STORMY, WESTMINISTER, CO	06/20/00
SIMON, CAROLYN SUE, ENID, OK	06/20/00
SMITH, KIMBERLY A, LACKAWANNA, NY	06/20/00
SMITH, ERIC J, BELLVUE, IL	06/20/00
VARGAS, MICHELLE, SCHAUMBURG, IL	06/20/00
WARRIOR, GAYNELL, CHECOTAH, OK	06/20/00
WRIGHT, JANICE MARIE, PITTSBURGH, PA	06/20/00
CONVICTION FOR HEALTH CARE FRAUD	
DAVIS, ROBERT LEE, KEITHVILLE, LA	06/20/00
HARLEY, JOHN HINTON, PUEBLO, CO	06/20/00
HUSAIN, ABDUL, E MEADOW, NY	06/20/00
ROYER, MARY ANN, DENVER, CO	06/20/00
STRUBLE, ENRIQUE E, KINGMAN, KS	06/20/00
WASHINGTON, RENEE M, SUMTER, SC	06/20/00
LICENSE REVOCATION/SUSPENSION/SURRENDERED	
ACOFF, CINDY LUE, TUSCALOOSA, AL	06/20/00
ALDRICH, RONALD DEAN, PLANO, TX	06/20/00
ALEXANDER, DERWIN, CHICAGO, IL	06/20/00
ALI, HAARIS, LOMBARD, IL	06/20/00
ALLEN, HENRY F, RUTLAND, VT	06/20/00
ASHLEY, KIMBERLY, CHICAGO, IL	06/20/00
AUSTIN, MILTON F, KEOKUK, IA	06/20/00
BAEDER, MARGARET S, AMBLER, PA	06/20/00
BARROS, JANET K, JAMAICA PLAIN, MA	06/20/00
BARTON, KIM DEWIT, CORPUS CHRISTI, TX	06/20/00

Subject, city, state	Effective date
BEEBE, JASON A, MASON CITY, IL	06/20/00
BERANEK, RICHARD N, COLUMBUS, OH	06/20/00
BERGEN, JOELLIE D, CHEYENNE, WY	06/20/00
BERGERSON, BERT CECIL, ODESSA, TX	06/20/00
BLACK, HOLLIE KIM, VISTA, CA	06/20/00
BLACKBURN, TOYA J, HAZELCREST, IL	06/20/00
BLADES, WILLIAM CLYDE, HERRIN, IL	06/20/00
BOSTICK, LINDA KAY, FAYETTE, AL	06/20/00
BOSWELL, JULIE LEIGH, TRINITY, TX	06/20/00
BOULAND, PAUL D, DES MOINES, IA	06/20/00
BRANDON, LISA ANN, FORT WORTH, TX	06/20/00
BRANHAM, TIMOTHY L, COLUMBUS, OH	06/20/00
BRAUN, BENNETT G, SKOKIE, IL	06/20/00
BRICKNER, JAN MARIE, E PEORIA, IL	06/20/00
BROCK, LAWRENCE S, CLEARFIELD, IA	06/20/00
BROWN, GAIL D, GREGORY, MI	06/20/00
BURRAGE, BERNADETTE, DOLTON, IL	06/20/00
BUTLER, DENISE L, CHICAGO, IL	06/20/00
CALAMON, PAUL JONATHAN, SAN ANTONIO, TX	06/20/00
CARLSON, STEVEN A, BURNSVILLE, MN	06/20/00
CARLTON, CONSTANCE S, CENTERVILLE, OH	06/20/00
CHABOT, JACQUELINE D, SANTEE, CA	06/20/00
CILURSO, JUNE EVA, CORTE MADERA, CA	06/20/00
COLBERT, CRISTIN M, PROSPECT PARK, PA	06/20/00
COLEMAN, CORNELL, CHICAGO, IL	06/20/00
COMPANY, CHRISTOPHER LAVERN, DALLAS, TX	06/20/00
COPPAGE, BRENDA A, WALTON, KY	06/20/00
COX, JOELENA A, EDGEWOOD, IL	06/20/00
CRENSHAW, RODERICK K, COLUMUS, OH	06/20/00
CRONIN, BARBARA, ORELAND, PA	06/20/00
DAIGLE, DONALD E, N ANDOVER, MA	06/20/00
DANTZLER, JOHN ALVIN, BREWTON, AL	06/20/00
DAVIES, BRIAN W, AKRON, OH	06/20/00
DEUTSCH, TIEASE D, SALISBURY, NC	06/20/00
DICKENS, JAMES C, LAKEWOOD, OH	06/20/00
DRIVER, MARY A, BELLWOOD, IL	06/20/00
ELLER, ELVIRA, HUTTO, TX	06/20/00
ELLISON, THOMAS M, NORTHLAKE, IL	06/20/00
FEREBEE-ECHOLS, DEBORAH YVONNE, CHESAPEAKE, VA	06/20/00
FLOYD, KATHY L, LANCASTER, TX	06/20/00
FORESMAN, ROBERT P, CASEY, IL	06/20/00
FOX, WILLIAM JR, WOODBRIDGE, VA	06/20/00
FRAZIER, SHARON LAVETTE, BIRMINGHAM, AL	06/20/00
FREW, JAMES R JR, BIG RAPIDS, MI	06/20/00
GILL, JEFFREY J, MANHAWKIN, NJ	06/20/00
GLICK, RONALD EVERETT, MAPLE GLEN, PA	06/20/00
GORSKI, CARLEIGH M, TUCSON, AZ	06/20/00
GRANT, JOANNE NEWSOM, GEORGIANA, AL	06/20/00
GREEN, ARVINIA, BOWLING GREEN, KY	06/20/00
GREEN, RICHARD GORDON, HUNTINGTON, NY	06/20/00
GRIFFITH, JULLIAN DRU, FULTON, TX	06/20/00
GROSS, MARY H, N WASHINGTON, PA	06/20/00
HARMON, JENNETTA JOYCE, ENTERPRISE, AL	06/20/00
HARRIS, JANET MABEL DEAN, MOBILE, AL	06/20/00
HARRIS, PAMELA E, MARKHAM, IL	06/20/00
HINDMAN, RONALD E, HARWICH, MA	06/20/00
HOLE, BARBARA A, WASHINGTON, IA	06/20/00
HORNE, JAMES THOMAS, BRONXVILLE, NY	06/20/00
HUGGINS, CARMEN YADIRA, DAPHNE, AL	06/20/00
HUIZINGA, RAMONA C, LOCKPORT, IL	06/20/00
HUTCHINSON, ARCHIBALD W, AURORA, IL	06/20/00
IVERSON, ROGER G, EAGLE RIVER, WI	06/20/00
JEFFERSON, MILDRED DIANNE, JASPER, AL	06/20/00
JENSEN, BERNARD, ARGYLE, NY	06/20/00
JOHNSON, RANDALL O, LAKE FOREST, IL	06/20/00
KENT, KATHRYN AMY, TUPELO, MS	06/20/00
KETCHUM, CAROLL COLLEEN, OKLAHOMA CITY, OK	06/20/00
KIM, DONG I, HOLLAND, MI	06/20/00
KINNAIRD, WILLIAM S, NOVELTY, OH	06/20/00
KOEPFER, DAWN M, SCOTTSDALE, AZ	06/20/00
LAMER, LORI LYNN, IOWA PARK, TX	06/20/00
LAND, CASSANDRA NELL, MOBILE, AL	06/20/00
LAVENDER, JANIS HORNER, VOORHEES, NJ	06/20/00

Subject, city, state	Effective date
LEFLER, TINA L, COELLO, IL	06/20/00
LEHRMAN, ROBIN ANN, READING, PA	06/20/00
LELKO, BETHANY JO, CARNEGIE, PA	06/20/00
LIPSIUS, PETER, LIBERTY, NY	06/20/00
LOCKE, DEANNA CHRISTINE, SALADO, TX	06/20/00
LOWERY, SAMUEL R, FOSTORIA, OH	06/20/00
MADDUX, TEDDY RAYE, SACRAMENTO, CA	06/20/00
MADISON, KIMBERLEY J, STANDISH, ME	06/20/00
MARTINEZ, KRISTEN NOELLE, KATY, TX	06/20/00
MATHER, BARBARA ANN, EL CAJON, CA	06/20/00
MAYS, JEREMY VINCENT, HOUSTON, TX	06/20/00
MCCALLUM, MARK FRANKLIN ARCHIE, WYOMING ONTARIO, CN	06/20/00
MCELYNN, MARIANN, FREEPORT, NY	06/20/00
MCLAUGHLIN, DEBRA A, HASTINGS, MI	06/20/00
MILLER, JOAN C, VERNON, TX	06/20/00
MISTYSYN, CHRISTINE J, FREDERICK, MD	06/20/00
MOORE, SUSAN R, MADISONVILLE, KY	06/20/00
MORROW, SUSAN K, CHAMPAIGN, IL	06/20/00
MUNDY, JOANN C, INDEPENDENCE, VA	06/20/00
MUNN, ERIN K, FRANKFORT, KY	06/20/00
NELSON, JONI L, ST PAUL, MN	06/20/00
NEMETH, IRWIN, CORONADO, CA	06/20/00
NORGART, MELISSA BLAKE, SANFORD, FL	06/20/00
NORTON, WYMAN H, LAGRANGE, GA	06/20/00
O'REILLY, LINDA K, WILLIAMSBURG, VA	06/20/00
PAYNE, MARGARET A RHODEN, GAINESVILLE, FL	06/20/00
PEPIN, LAURIER A, LEWISTON, ME	06/20/00
PEPPMEIER, ROBERT E, SPRINGFIELD, MO	06/20/00
PERRY, TERESA A, FLORAL CITY, FL	06/20/00
PHARR, DONNA M, BONHAM, TX	06/20/00
PINZON, MANUEL, BAYSIDE, NY	06/20/00
PIRRIE, RICHARD MICHAEL, INDIAN ROCKS BCH, FL	06/20/00
POWELL, GREGORY V, LOVELAND, OH	06/20/00
POWERS, MELVA J, LANSING, MI	06/20/00
PROVO, IAN V, ROCKFORD, IL	06/20/00
PURIFOY, SERETA M, CLEVELAND, OH	06/20/00
PURKSON, LORRIA DENISE, BIRMINGHAM, AL	06/20/00
RAINEY, CYNTHIA E, LAWRENCEVILLE, VA	06/20/00
RASNAKE, VICKIE, LEBANON, VA	06/20/00
RAWLINSON, SANDRA DIANE, ATMORE, AL	06/20/00
REMET, JUDITH B, KINGSTON, NY	06/20/00
RIVERA, LINEA, ALHAMBRA, CA	06/20/00
ROHR, KIMBERLY TALARIGO, PORTAGE, PA	06/20/00
RUNNELS, DOROTHY FAYE, TYLER, TX	06/20/00
SANDERS, DONALD E JR, CAMPTON, KY	06/20/00
SANSHU, TROY EDWARD, SAN DIEGO, CA	06/20/00
SANTIAGO, PARRY ANTONIO, SONOMA, CA	06/20/00
SCOON, MALCOLM E, MALONE, NY	06/20/00
SEMPKOWSKI, LEON C, TUCSON, AZ	06/20/00
SHIPLEY, RAY L, SALINAS, CA	06/20/00
SICILIANI, KRISTYN RAE, CARROLLTON, TX	06/20/00
SIDEMAN, CASEY H, HOMERVILLE, GA	06/20/00
SILVA, SHARON L, BRISTOL, CT	06/20/00
SMITH, ROBIN MICHELLE, HUEYTOWN, AL	06/20/00
SOHN, YOUNG S, UPPER SADDLE RIVER, NJ	06/20/00
SPENCE, CINDY LEE, MARSHALL, TX	06/20/00
STALHEIM, ALAN J, CARPINTERIA, CA	06/20/00
STEINBERG, TORI L, WASHINGTON, IA	06/20/00
STEVENS, KATHERINE LOUISE SMITH, JELLICO, TN	06/20/00
STEWART, MARY DARLENE, SUMITON, AL	06/20/00
STRICKLAND, ROBIN J, CHARLESTOWN, NH	06/20/00
SUZUKI, ANTHONY, LONG BEACH, CA	06/20/00
TARNACKI, ANNE M, ALLEN PARK, MI	06/20/00
TAYLOR, ROBERT M, NEW MILFORD, CT	06/20/00
TEKLUVE, JOHN P, CINCINNATI, OH	06/20/00
TOMPKINS, WANDA NELL, PORT RICHEY, FL	06/20/00
TOMPKINS, CAROLE ANN, YULEE, FL	06/20/00
TREVINO, MARY ROSE, CORPUS CHRISTI, TX	06/20/00
VIEDER, MARK D, FARMINGTON HILLS, MI	06/20/00
VILLARREAL, GLORIA G, HOUSTON, TX	06/20/00
WADE, JAMES OLIVER, ASHDOWN, AR	06/20/00
WARE, ALTON T, CLEVELAND, OH	06/20/00
WEBER, WARREN SIDNEY, SMITHTOWN, NY	06/20/00

Subject, city, state	Effective date
WHITE, CHRISTOPHER PAUL, MOULTON, AL	06/20/00
WHITE, PATRICIA LOUISE, TEMPLE, TX	06/20/00
WILCOX, SUSAN ALEEN, N PLATT, NE	06/20/00
WILLETT, JOHN E, MUSKEGON, MI	06/20/00
WINGO, WANDA JEAN, DEATSVILLE, AL	06/20/00
WRIGHT, SUSAN J, COMSTOCK PARK, MI	06/20/00
WYATT, MIAXIE, LOUISVILLE, KY	06/20/00
YATES, GERALD ALEX, SHELBY, AL	06/20/00
YNOSTROSA, RICARDO RAMOS, SAN ANTONIO, TX	06/20/00
ZARKIN, ALLAN, NEW YORK, NY	06/20/00
ZAWADZKI, KATHY J, WAUKEGAN, IL	06/20/00
FEDERAL/STATE EXCLUSION/SUSPENSION	
MASON MEDICAL SUPPLY, CHATSWORTH, CA	06/20/00
FRAUD/KICKBACKS	
LLOYD, SUZANNE MARLBOROUGH, CT	12/08/98
LLOYD GROUP LTD MARLBOROUGH, CT	12/08/98
NEW AGE PULMONARY DIAGNOSTICS, WALNUT, CA	03/12/99
PETER J EMBRIANO, M D, P C, SOMERS, CT	07/28/98
SAYERS, AARON, WALNUT, CA	03/12/99
TLG ELDERCARE INC, MARLBOROUGH, CT	12/08/98
ADVANCED MEDICAL SOLUTIONS, DENVER, CO	02/14/99
BARNO CHIROPRACTIC, ORANGEVALE, CA	06/20/00
CHIROPRACTIC HEALTH & HEALTH, KELLER, TX	06/20/00
CONTINUING HEALTH CARE ED, INC, DENVER, CO	02/14/99
DME OF CASTLE ROCK, INC, DENVER, CO	02/14/99
DME OF LONGMONT, INC, DENVER, CO	02/14/99
DR ABY KAHN, INC, SAN JOSE, CA	06/20/00
DURABLE MEDICAL EQUIPMENT, INC, DENVER, CO	02/14/99
E MARK WATERMAN, D C CHIRO, CLAREMONT, CA	06/20/00
EHRHARDT PHARMACY, INC, EHRHARDT, SC	06/20/00
HEALTH CARE RESOURCES GROUP, DENVER, CO	02/14/99
HOME HEALTH CARE RESOURCES, DENVER, CO	02/14/99
JAVARONE CHIROPRACTIC, P C, OAKDALE, PA	06/20/00
KRISON MEDICAL EQUIP, INC, HIALEAH, FL	06/20/00
NC DIAGNOSTIC AND BILLING, INC, STATEN ISLAND, NY	06/20/00
OCEAN HILLS CHIROPRACTIC, PLAYA DEL REY, CA	06/20/00
P M R, INC, DENVER, CO	02/14/99
PARKWOOD DENTAL OFFICE, INC, MIAMI, FL	06/20/00
PORTILLO CHIROPRACTIC, CAMPBELL, CA	06/20/00
PROF MED RESOURCES OF OREGON, DENVER, CO	02/14/99
PROFESSIONAL HEALTH RESOURCES, DENVER, CO	02/14/99
PROFESSIONAL MEDICAL RESOURCES, DENVER, CO	02/14/99
REYES CHIROPRACTIC CENTER, VISALIA, CA	06/20/00
TOTAL CARE HEALTH SERVICES, DENVER, CO	02/14/99
DEFAULT ON HEAL LOAN	
ANDERSON, SHARON R, FULLERTON, CA	05/01/00
BETTS, ROBERT E, JACKSON, MI	06/20/00
CHOCHLA, THOMAS N, WALESKA, GA	06/20/00
COOK, IAN K, AMITYVILLE, NY	06/20/00
CORNELY, MICHAEL P, MERCHANTVILLE, NJ	04/26/00
CURTIS, DIANE B, NEWPORT BEACH, CA	06/20/00
DAVALOS, STEVEN M, CARMEL VALLEY, CA	06/20/00
ELDER, TERRY M, LOMBARD, IL	06/20/00
FOSTER, GRADY JR, SILVER SPRING, MD	06/20/00
FUCIGNA, ROBERT J, STAMFORD, CT	06/20/00
HANES, KATHY JANE, SAN DIEGO, CA	06/20/00
HENDERSON, CHARLES A, ATLANTA, GA	06/20/00
HOWARD, MICHAEL S, DALLAS, TX	06/20/00
HUDSON, SCOTT C, VICTORVILLE, CA	06/20/00
HUTCHINGS, LYLE W, UPLAND, CA	06/20/00
ISRAELSEN, JOHN A, LOGAN, UT	05/10/00
JOYCE, KARLA A, SHOREVIEW, MN	06/20/00
KELLY, KEVIN M, RANCHO CORDOVA, CA	06/20/00
KOONTZ, ROBIN M, FT LAUDERDALE, FL	06/20/00
LEWIS, GEORGE M, SUISUN, CA	02/09/00
LICHTMAN, SUSAN L, BROOKLYN, NY	06/20/00
LINEHAN, BRUCE M, PUYALLUP, WA	06/20/00

Subject, city, state	Effective date
MAJOR, MICHAEL J, MT DORA, FL	06/20/00
MARTINEZ, THEODORE J, FRESNO, CA	06/20/00
MASSO, JOHN G, NASHVILLE, TN	06/20/00
MEREDITH, MARGARET L, BLACKSBURG, VA	06/20/00
MITCHIE, DALE P, ESSEXVILLE, MI	06/20/00
MURPHY, MICHAEL A, ASBURY PARK, NJ	04/24/00
NICHOLS, MARCUS F, CULVER CITY, CA	05/01/00
NOWRY, REMOND, N HOLLYWOOD, CA	06/20/00
PARCHMENT, LESLIE D, CLEVELAND, OH	06/20/00
RISING SUN, ZANE C, BISMARCK, ND	06/20/00
ROBINETTE, TERRY A, SANDY, UT	04/05/00
SCHILLER, CHISTINE M, FOUNTAIN VALLEY, CA	06/20/00
SNOPARSKY, HARRIS J, BENNINGTON, VT	06/20/00
SPATES, CHRISTA Y, CHICAGO, IL	06/20/00
ST JUSTE, DOMINIQUE, BROOKLYN, NY	06/20/00
STINE, SUSAN M, GROSSE POINTE PK, MI	06/20/00
TARKI, FARHAD, DALLAS, TX	06/20/00
VAISHVILA, GAIL A, SANTA MONICA, CA	06/20/00
WARD, LARRY A, LAPORTE, TX	06/20/00

Dated: June 5, 2000.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–14812 Filed 6–12–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–35]

Notice of Submission of Proposed Information Collection to OMB; Section 8 Management Assessment Program (SEMAP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 13, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0215) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be submitted from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours or response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Section 8 Management Assessment Program (SEMAP).

OMB Approval Number: 2577–0215.

Form Numbers: HUD–42648.

Description of the Need for the Information and its Proposed Use: HUD will use public housing agency annual SEMAP certificates to rate and assess PHA management capabilities and deficiencies in key program areas. PHAs designated as troubled must implement plans for improvements.

Respondents: State, Local, or Tribal Governments.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	2565		1		13.5		34,720

Total Estimated Burden Hours: 34,720.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 5, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–14867 Filed 6–12–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Availability of the Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System Proposed Action Modifications Documenting the Department of the Interior's Approval for the Central Utah Water Conservancy District to Proceed With the Construction of the Diamond Fork System Proposed Action Modifications

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of availability of the Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System Proposed Action Modifications.

SUMMARY: On June 15, 2000, Ronald Johnston, Program Director, Central Utah Project Completion Act, Department of the Interior (Interior), signed the Finding of No Significant Impact (FONSI) which documents the selection of the Proposed Action Modifications as presented in the Final Environmental Assessment for the Diamond Fork System Proposed Action Modifications (Modifications EA). Interior has determined that implementing the modifications to the Proposed Action Alternative described in the Modifications EA will not have a significant impact on the quality of the human environment and that an environmental impact statement is not required. The Proposed Action Alternative was described in the July 1999 Diamond Fork System Final Supplement to the Final Environmental Impact Statement (FES 99–25) (FS–FEIS).

The FONSI also approves the Central Utah Water Conservancy District (CUWCD) proceeding with construction of the Diamond Fork System, in accordance with statutory and contractual obligations. The following features will be constructed as part of the modifications to the Proposed Action: (1) Sixth Water Connection to Upper Diamond Fork Shaft, (2) Sixth Water Shaft, (3) Upper Diamond Fork Flow Control Structure, (4) Upper Diamond Fork Tunnel, (5) Monks Hollow Overflow Structure, (6) Diamond Fork Creek Outlet, (7) Diamond Fork Pipeline Extension, (8) Connection to Diamond Fork Pipeline, and (9) Access Road and Road Reconstruction.

The Proposed Action Modifications will be operated on an interim basis the same as described in the FS–FEIS, including the quantity and timing of minimum streamflows and the flexibility to other operational scenarios, except for the discharge location of the minimum streamflows into Diamond Fork Creek. The potential for generating hydroelectric power would remain the same as described in the FS–FEIS.

A Notice of Availability of the Draft Modiciations EA was published in the March 20, 2000, **Federal Register** (Volume 65, Number 54, Page 14998–14999), and a copy of the Draft Modifications EA was sent to all the agencies, groups, and individuals who received a copy of the FS–FEIS on March 24, 2000. Comments on the Draft Modifications EA were due on April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, E-mail rmurray@uc.usbr.gov

Dated: June 1, 2000.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 00–14813 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Torres Martinez-Calpine Power Generating Facility, Riverside County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Torres Martinez Desert Cahuilla Indians and Calpine Corporation, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the proposed Torres Martinez-Calpine Power Generating Facility that Calpine would construct and operate on a 40-acre parcel within the Torres Martinez Indian Reservation, Riverside County, California. The purpose of the proposed action is to help Calpine Corporation meet the electrical power needs of southern California. Details on the project location, proposed action and initial areas of environmental concern to be addressed in the EIS follow as supplementary information. This notice also announces a public scoping meeting for the content of the EIS.

DATES: Comments on the scope and implementation of this proposal must arrive by July 14, 2000. The public scoping meeting will be held on June 28, 2000, from 7 p.m. to 10 p.m.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to Ronald M. Jaeger, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California, 95825–1846. You may also comment via the Internet to billallan@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive confirmation from the system that your Internet message was received, contact us directly at (916) 978–6043.

Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The public scoping meeting will be held at the Tribal Hall, Torres Martinez Indian Reservation, 66–725 Martinez Road, Thermal, California.

FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043, or Bobbi Fletcher, (760) 397–9850.

SUPPLEMENTARY INFORMATION: Calpine Corporation, through an agreement with the Torres Martinez Desert Cahuilla Indians, plans to construct, own and operate a 600 megawatt natural gas-fired power plant on a 40-acre parcel of tribal trust land in Riverside County, California, northeast of the town of Mecca. The parcel is located along 62nd Avenue, east of Johnson Street in proximity to the Coachella Canal.

Natural gas is proposed to be supplied to the plant by a new 10 to 12 mile gas line extending northward to a connection point north of the I–10 Freeway. Electricity produced by the plant would be routed through an on-site substation to nearby electrical transmission lines. Improvements to several miles of off-site transmission lines may also be required. Cooling water for the plant is proposed to be obtained from on-site wells. The water would be cycled, then possibly discharged for beneficial re-use at fish farms and/or vineyards on nearby Torres Martinez tribal lands.

The areas of environmental concern so far identified include air quality, biological and botanical resources, aesthetics, water resources and cultural resources. This range of issues may be expanded based on comments received during the scoping process.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: June 5, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–14888 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before MA June, 3, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 28, 2000.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Moffat County

Bromide Charcoal Kilns, Off Cty. Rd. 10, Greystone, 00000740

Park County

Como School, (Rural School Buildings in Colorado MPS) Spruce St., Como, 00000739

GEORGIA

Fulton County Martin Luther King, Jr. Historic District (Boundary Increase), Roughly bounded by Freedom Pkwy., John Wesley Dobbs Ave., Decatur St., Southern RR tracks, and I–75/85, Atlanta, 00000741

IDAHO

Fremont County Crabtree, Glen and Addie, Cabin, 3939 Cowan Rd., Island Park, 00000742

MARYLAND

Baltimore Independent City Cecil Apartments, 1123 N. Eutaw St., Baltimore, 00000743

One Charles Center, 100 N. Charles St., Baltimore, 00000745

Stieff Silver Company Factory, 800 Wyman Park Dr., Baltimore, 00000744

NEW YORK

Jefferson County

Trinity Episcopal Church and Parish House, (Historic Churches of the Episcopal Diocese of Central New York MPS) 227 Sherman St., Watertown, 00000747

Orange County

Old Town Cemetery and Palatine Church Site, Grand St., Newburgh, 00000746

Otsego County

Beardslee Farm, NY 80 at Cty Rd. 18, Pittsfield, 00000748

OHIO

Clark County Main Street Buildings, 6–14 E. Main St., Springfield, 00000749

Cuyahoga County

Lerner Building, 322–324 Euclid Ave., Cleveland, 00000750

TEXAS

Harris County

Link—Lee House, 3800 Montrose, Houston, 00000751

[FR Doc. 00–14815 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning Records Management

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is converting and update its current system of internal instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public review and comment. Draft Director's Order #19 establishes a comprehensive policy to guide the NPS records management program.

DATES: Written comments will be accepted until July 13, 2000.

ADDRESSES: Draft Director's Order #19 is available . Requests for copies and written comments should be sent to Michael Grimes, National Park Service, Washington Administrative Program Center, 1849 C Street, NW, MS 3316, Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Michael Grimes, (202) 208–4333.

SUPPLEMENTARY INFORMATION: The NPS is revising the policies and procedures that direct the management of its records. To accomplish this, the records management policies in NPS–19, Records Management are rescinded. The new policies and procedures will be issued in Director's Order #19, in conformance with the new system of NPS internal guidance documents.

Dated May 30, 2000.

Michael A. Grimes,

Service-wide Records Officer.

[FR Doc. 00–14679 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 12, 2000 at 2:00 p.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

AGENDA ITEM TO BE REMOVED: 5. Inv. Nos. 701–TA–253 and 731–TA–132, 252, 271, 276–277, 296, 409–410, 532–534, and 536–537 (Review) (Certain Pipe and

Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 26, 2000).

In accordance with 19 CFR § 201.35(d)(2), interested parties are hereby notified that the Commission has determined that Commission business requires removal of the above agenda item from the meeting of Monday, June 12, 2000 at 2:00 p.m. No earlier announcement of such change was possible.

Issued: June 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14996 Filed 6–9–00; 2:10 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (reinstatement, without change, of a previously approved collection for which approval has expired) Juvenile Residential Facility Census.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 14, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joseph Moone, 202–616–3634, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, DC 20531. 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:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Juvenile Residential Facility Census Bravery.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–15, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal public juvenile justice facilities, private juvenile facilities. *Other:* none.

This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the questionnaire is 7,000 annual burden hours. The survey will be conducted biennially.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania, NW, Washington, D.C..

Dated: June 7, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–14816 Filed 6–12–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–30; Exemption Application No. D–10188, et al.

Grant of Individual Exemptions; Barclays Bank PLC and Its Affiliates (Collectively, Barclays)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Barclays Bank PLC and its Affiliates (Collectively, Barclays), Located in London, England;

[Prohibited Transaction Exemption 2000–30; Application No. D–10188]

Exemption

Section I—Retroactive Exemption for the Acquisition, Holding and Disposition of Barclays PLC Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of December 31, 1995 until June 13, 2000, to the acquisition, holding and disposition of the common stock of Barclays PLC (the Barclays PLC Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of the Barclays PLC Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays PLC Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) All aggregate daily purchases of Barclays PLC Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays PLC Stock occurring on the applicable exchange and automated trading system (as described in paragraph (c) below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays PLC Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of Barclays PLC Stock occur either (i) on the London Stock Exchange, a recognized securities exchange as defined in Section IV(k) below, (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the Securities Exchange Act of 1934 (the ''34 Act), and thereby subject to regulation by the U.S. Securities and Exchange Commission (SEC), or subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (UK).

(d) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than five (5) percent of the total amount of Barclays PLC Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(f) Barclays PLC Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays PLC Stock, pursuant to the procedures described in the notice of proposed exemption published on March 14, 2000 [1] (see Paragraph 11 of the Summary of Facts and Representations regarding portfolio management services provided for particular plans), other than in the case of an employee benefit plan sponsored or maintained by Barclays PLC and/or an Affiliate for its own employees (a Barclays Plan).

(h) A fiduciary independent of Barclays directs the voting of the Barclays PLC Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays PLC Stock are required or permitted to vote.

(i) No more than ten (10) percent of the assets of any Fund that acquires and holds Barclays PLC Stock is comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

Section II—Prospective Exemption for the Acquisition, Holding and Disposition of Barclays Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of Barclays PLC Stock or the common stock of an Affiliate of Barclays PLC (Barclays PLC Affiliate Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of Barclays PLC Stock or Barclays PLC Affiliate Stock (collectively, Barclays Stock) is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) Whenever Barclays Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Barclays Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

[1] See 65 FR 13836.

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Barclays Stock occur either (i) on a recognized securities exchange (as defined in Section IV(k) below), (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) below) that is operated by a recognized securities exchange (as defined in Section IV(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Barclays Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock, Barclays appoints a fiduciary which is independent of Barclays to design acquisition procedures and monitor Barclays' compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of Barclays Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Barclays Stock not otherwise described in paragraph (b) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK (SFA–UK) or another applicable regulatory authority, (ii) effected on an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation by either the SEC, SFA–UK, or another applicable regulatory authority, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than five (5) percent of the total amount of either Barclays PLC Stock or any Barclays PLC Affiliate Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(g) Barclays Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock, pursuant to the procedures described in the notice of proposed exemption published on March 14, 2000 (see Paragraph 11 of the Summary of Facts and Representations regarding portfolio management services provided for particular plans), other than in the case of a Barclays Plan.

(i) A fiduciary independent of Barclays directs the voting of the Barclays Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays Stock are required or permitted to vote.

(j) No more than ten (10) percent of the assets of any Fund that acquires and holds Barclays Stock is comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

Section III—General Conditions

(a) Barclays maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Barclays, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Barclays shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of Barclays or commercial or financial information which is considered confidential.

Section IV—Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Barclays, in which one or more investors invest, and—

(1) which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) for which Barclays does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Barclays, in which one or more investors invest, and—

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Barclays, to transform an independently maintained Index, as described in Section IV(c) below;

(2) which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Barclays or any party in which Barclays may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) the organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) the index is created and maintained by an organization independent of Barclays; and,

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of Barclays.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of Barclays Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term ''Barclays'' refers to Barclays PLC and its Affiliates, as defined below in paragraph (g), including Barclays Global Investors, N.A. (BGI), Barclays Global Fund Advisors, Barclays Global Investors Services, Barclays Global Investors International, Inc., Barclays Global Investors Asset Risk Management Limited, Barclays Bank PLC (London), Barclays Bank of Canada, Barclays Bank Zimbabwe, Barclays Bank of Kenya, and Barclays Bank of Botswana, Ltd.

(g) The term ''Affiliate'' means, with respect to Barclays PLC, an entity which, directly or indirectly, through one or more intermediaries, is controlled by Barclays PLC;

(h) An ''affiliate'' of Barclays includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the '34 Act [15 USC 78c(a)(51)(A)(ii)].

(k) The term ''recognized securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the '34 Act (15 USC 78f), or a designated offshore securities market, as defined in Regulation S of the SEC [17 CFR part 230.902(b)], as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.,* 17 CFR part 240.3b–16).

EFFECTIVE DATE: This exemption is effective as of December 31, 1995, for those transactions described in Section I above, and as of the date the exemption is published in the **Federal Register** for those transactions described in Section II above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 14, 2000, at 65 FR 13836.

Written Comments:

The applicant (*i.e.,* Barclays) submitted written comments with respect to the notice of proposed exemption (the Proposal). These comments, and the Department's responses thereto, are summarized below.

1. Volume Limitations. With respect to the percentage limitations on the volume of trading that aggregate daily purchases of Barclays Stock by the Funds may represent, sections I(b), II(b)(5), and II(c) of the Proposal state that such purchases may not exceed 15 percent of the average daily trading volume ''* * * occurring on the applicable exchange or automated trading system.'' The Applicant stated that the volume limitation should refer to the aggregate trading volume in Barclays Stock, rather than the trading volume on a particular trading system on which the Barclays Stock may have been traded. Barclays noted that the language of the Proposal may prove overly restrictive and present difficulties in gathering the required daily volume data for a particular

automated trading system. Therefore, Barclays requested that the conditions relating to the volume limitation be modified to state that aggregate daily purchases not exceed 15% of the total trading volume of the Barclays Stock (regardless of where it is traded).

In consideration of this comment, the Department has revised the language of sections I(b)(1) and (2), II(b)(5), and II(c)(1) and (2) of the exemption by deleting the word ''or'' and substituting the word ''and'' in its place, so that the operative phrase in each of the subsections now reads ''* * * occurring on the applicable exchange and automated trading system.'' [emphasis added]

2. Investments by Affiliated Plans. The applicant represented that certain employee benefit plans established or maintained by an Affiliate of Barclays PLC for its own employees (*i.e.,* a Barclays Plan) have invested, and may continue to invest, in Index Funds or Model-Driven Funds that invest in Barclays Stock. Since December 31, 1995, and currently, three of these Barclays Plans have invested in a Fund which held or holds Barclays PLC Stock. These three Barclays Plans are: (i) The Barclays Global Investors 401(k) Savings Plan; (ii) the Barclays Global Investors Retirement Plan; and (iii) the Barclays Bank PLC USA Pension Trust. The applicant stated that at all times since December 31, 1995, the holdings of these three Barclays Plans together have comprised less than ten (10) percent of the assets of the Fund. In this regard, Barclays stated that a Barclays Plan should not be required to have an independent fiduciary authorize the investment of such a Plan's assets in an Index or Model-Driven Fund that includes Barclays Stock in its portfolio, especially since such Stock may only represent a small portion of the index on which the investments of the Fund are based. Therefore, the applicant requested that the requirements contained in section I(g) and II(h) of the Proposal be modified accordingly.

In consideration of the applicant's comment, the Department has modified sections I(g) and II(h) herein by inserting the phrases '' * * * other than in the case of an employee benefit plan sponsored or maintained by Barclays PLC and/or an Affiliate for its own employees (a Barclays Plan)'' and ''* * * other than in the case of a Barclays Plan'' respectively at the end of those subsections.

In addition, with the applicant's consent, the Department has added a condition (see sections I(i) and II(j) above) which requires that no more than ten (10) percent of the assets of any Fund that acquires and holds Barclays Stock shall be comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

3. Changes in Names and Status of Certain Entities. The Applicant noted that in section III(f) of the Proposal, and in Paragraph 1 of the Summary of Facts and Representations in the Proposal (the Summary), reference is made to several entities whose name has changed since the date the exemption application was filed. In this regard, the Applicant represented the following: BZW Barclays Global Investors, N.A., is now Barclays Global Investors, N.A.; BZW Barclays Global Fund Advisors is now Barclays Global Fund Advisors; BZW Barclays Global Investors Services is now Barclays Global Investors Services; BZW Investment Management, Inc. is now Barclays Global Investors International Inc.; and BZW Asset Risk Management Limited is now Barclays Global Investors Asset Risk Management Limited. The Applicant noted further that Barclays Global Investors Asset Risk Management Limited is no longer registered as an investment adviser under the Investment Advisers Act of 1940.

Therefore, the Department has modified the information contained in the definition of the term ''Barclays'' in section IV(f) of the exemption to refer to these entities as stated above.

4. Exclusion of Barclays Stock from Certain Funds. The Applicant noted that in Paragraph 5 of the Summary, reference is made to the exclusion of Barclays Stock, since December 31, 1995, from the portfolios of any new Index or Model-Driven Funds established by Barclays, even though such Stock is included in indexes upon which such Funds are based. Barclays wished to clarify that there have been Index and Model-Driven Funds established since December 31, 1995, that have purchased Barclays Stock. However, Barclays represented that these Funds were not subject to the fiduciary responsibility provisions of the Act at the time the ''buy-up'' of Barclays Stock by the Funds occurred.

The Department acknowledges the applicant's clarification to the information contained in Paragraph 5 of the Summary.

5. Weight of Barclays PLC Stock in Certain Indexes. The applicant noted that in Paragraph 10 of the Summary, reference is made to the weight of Barclays PLC Stock in certain indexes. In this regard, Barclays represented that as of April 25, 2000, Barclays PLC Stock represented 2.05% of the MSCI UK Index and 1.75% of the FTSE 100 Index.

The Department acknowledges the applicant's additional information and notes that the data provided is consistent with the requirements of the exemption (see section I(f) above).

6. Transactions with Parties in Interest. The applicant noted that in Sections I(d) and II(e) of the Proposal, Barclays Stock cannot be acquired from, or sold to, a Barclays entity (including officers, directors or employees thereof) or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund. With respect to the latter portion of these restrictions, the applicant requested that the Department clarify that principal transactions by a Fund with such parties in interest should be permitted, if such transactions would otherwise be subject to an applicable exemption.

In such transactions, Barclays Stock would be acquired or sold by the Fund along with a ''basket'' of other securities. The Fund would enter into a principal transaction with a party in interest that is a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA–UK or another applicable regulatory authority (see Section II(d)(i) of the exemption). The applicant stated that such a transaction could be exempt under another exemption, if the applicable conditions of that exemption were met. For example, Prohibited Transaction Exemption (PTE) 91–38, 56 FR 31966 (July 12, 1991) permits bank collective investment funds, in which employee benefit plans have an interest, to engage in certain transactions with parties in interest (including fiduciaries of investing plans), provided that the specified conditions required therein are met. However, Section I(a) of PTE 91–38 does not provide an exemption for any violations of section 406(b)(1) of the Act which may occur as a result of such transactions. Section 406(b)(1) states, in pertinent part, that a fiduciary for a plan shall not deal with the assets of the plan in his own interest or for his own account.

In consideration of these comments, the Department has modified the language of Sections I(d) and II(e) of the exemption by adding the following parenthetical phrase at the end of those subsections:

''* * * (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).''

In this regard, the Department is providing no opinion as to whether such principal transactions would be covered by any existing exemptions.

Finally, the applicant stated that there is a pending merger of the London Stock Exchange and the German Bourse, a recognized securities exchange as defined in Section IV(k) above. Therefore, the applicant requested that Section II(b)(6) and II(d)(i) and (ii) be amended to refer to applicable foreign regulatory authorities other than the SFA–UK.

In response to this comment, the Department has modified Section II(b)(6) and II(d)(i) and (ii) by adding the phrase ''* * * or another applicable regulatory authority'' following the reference to the SFA–UK in those subsections.

No other comments, and no requests for a hearing, were received by the Department. Accordingly, the Department has determined to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

H. Ray McPhail (Mr. McPhail) and the H. Ray McPhail Profit Sharing Plan (the Plan), Located in Atlanta, Georgia

[Prohibited Transaction Exemption 2000–31; Exemption Application No. D–10678]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of four parcels of unimproved real property (the Property) and loan (the Loan) from the Plan to Mr. McPhail,[2] a disqualified person with respect to the Plan, provided that the following conditions are met:

(1) With respect to the Sale:

(A) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(B) The Sale will occur at a price (the Sale Price) which includes the greater of $270,000 or the Property's fair market value as established by a qualified, independent appraiser;

(C) In addition, the Sale Price will include a premium of $30,000 (the Assemblage Value) due to Mr. McPhail's ownership of unimproved real property located adjacent to the Property;

(D) The Plan will pay no fees or commissions with respect to the Sale; and

(E) Mr. McPhail will pay $60,000 or 20% of the Sale Price in cash with the balance paid for by the Loan; and

(2) With Respect to the Loan:

(A) The interest rate on the Loan (the Interest Rate) will be 7%, a rate set by the Macon Bank for a real estate loan having terms similar to the Loan;

(B) The Loan terms are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(C) The Loan is secured by a first security interest on certain real property, which has been appraised by a qualified, independent appraiser to have a fair market value not less than 150% of the principal amount of the Loan;

(D) The outstanding balance of the Loan will never exceed 20% of the assets of the Plan throughout the duration of the Loan; and

(E) The fair market value of the collateral remains at least equal to 150% of the outstanding principal balance plus accrued but not unpaid interest, throughout the duration of the Loan; and

(3) Should any employee of the Plan Sponsor become eligible for Plan participation, the new participant will be enrolled in another qualified retirement plan or the Loan will be immediately repaid.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 2000 at 65 FR 18354.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara of the Department, telephone (202) 219–8883 (this is not a toll free number).

Triumph Capital Group, Inc., Located in Boston, MA;

[Prohibited Transaction Exemption 2000–32; Exemption Application No. D–10708]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 22, 1997, to the making, by an employee benefit plan subject to the Act (the Plan), of capital contributions to any private equity fund (the Triumph Fund) that is organized, sponsored and/or managed by Triumph Capital Group, Inc. and/or any of its affiliates (collectively, Triumph) pursuant to a contractual obligation by a Plan having an interest in the Triumph Fund.[3]

This exemption is subject to the following conditions:

a. At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the Triumph Fund is not a party in interest with respect to the Plan.

b. The decision to make a capital contribution to a Triumph Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to Triumph and the portfolio company whose interest is acquired by the Triumph Fund.

c. Triumph does not otherwise provide investment advice as a fiduciary to the Plan, within the meaning of the Department's regulations at 29 CFR 2510.3–21(c), with respect to such Plan's assets that are invested in the Triumph Fund.

d. At the Determination Date, the Plan has aggregate assets that are in excess of $50 million; provided, however, that in the case of:

(1) Two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a Triumph Fund through a group trust, an insurance company pooled separate account or any other form of entity the assets of which are ''plan assets'' under the Department's regulations at 29 CFR 2510.3–101 (the Plan Asset Regulation), the foregoing $50 million requirement shall be satisfied if such trust, separate account, or other entity has aggregate assets which are in excess of $50 million, provided further that the fiduciary responsible for making the investment decision on behalf of such group trust, insurance company pooled separate account, or other entity has—

i. Full investment responsibility[4] with respect to the plan assets invested therein; and

ii. Total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of $100 million, for Triumph Funds established after April 7, 2000 (*i.e.,* the date the notice of proposed exemption was published in the **Federal Register**).

(2) Two or more Plans which are maintained by the same employer,

[2] Since Mr. McPhail is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[3] Triumph Funds are generally expected to be organized as venture capital operating companies that are managed by Triumph.

[4] For purposes of this exemption, the term ''full investment responsibility'' means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

controlled group of corporations or employee organization (the Related Plans), whose assets are invested in a Triumph Fund through a master trust or any other entity the assets of which are ''plan assets'' under the Plan Asset Regulation, the $50 million requirement shall in any event be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million, provided, further, that, in the case of a Triumph Fund established after the date the notice granting the exemption is published in the **Federal Register**, in addition to the $50 million requirement, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, then such fiduciary has total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of $100 million.

e. The Triumph Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in Section 3(14)(H) or (I) of the Act, including a fiduciary with respect to such Plan.

f. The capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer, controlled group of corporations or employee organization) with respect to the Triumph Fund, does not exceed 15 percent of the total capital commitments made by all investors with respect to such Triumph Fund, determined at the later of (i) the Determination Date or (ii) the date on which the Triumph Fund first becomes a party in interest with respect to such Plan.

g. At the Determination Date, the percentage of the Plan's assets committed to be invested in the Triumph Fund does not exceed 5 percent of the Plan's total assets.

h. At the Determination Date, a Plan's aggregate capital commitment to all Triumph Funds does not exceed 25 percent of the Plan's total assets.

i. The Plan receives the following initial and ongoing disclosures with respect to the Triumph Fund:

(1) A copy of the private placement memorandum applicable to the Triumph Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the Triumph Fund;

(3) A copy of the subscription agreement applicable to the Triumph Fund, if any;

(4) Copies of the proposed and final exemption, once such documents are published in the **Federal Register**; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the Triumph Fund, including copies of the Triumph Fund's annual financial statements.

j. With respect to capital contributions made to a Triumph Fund by a Plan after the date this exemption is published in the **Federal Register**, Triumph maintains or causes to be maintained, for a period of six (6) years from the date of the transaction, the records necessary to enable the persons described in paragraph (k) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of Triumph, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than Triumph, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (k).

k. (1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has an interest in the Triumph Fund and has the authority to acquire or dispose of the interest of the Plan in the Triumph Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plan which has an interest in the Triumph Fund, or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of Triumph or commercial or financial information which is privileged or confidential.

Effective Date: This exemption is effective as of July 22, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 2000, at 65 FR 18356.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

McDonald Investments Inc. (McDonald), Located in Cleveland, Ohio

[Prohibited Transaction Exemption 2000–33; Exemption Application No. D–10857]

Exemption

I. Transactions

A. Effective January 4, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[5]

B. Effective January 4, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan

[5] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[6] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 4, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[7]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective January 4, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a Rating Agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a Rating Agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit

[6] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[7] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) that is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which McDonald or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and

servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) McDonald;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with McDonald; or

(3) Any member of an underwriting syndicate or selling group of which McDonald or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) the trust owns or holds a security interest in the lease;

(2) the trust owns or holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. ''Rating Agency'' means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D&P) or Fitch IBCA, Inc. (Fitch) or their successors;

X. ''Capitalized Interest Account'' means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. ''Closing Date'' means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. ''Pre-Funding Account'' means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. ''Pre-Funding Period'' means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. ''McDonald'' means McDonald Investments Inc. and its affiliates.

The Department notes that this exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 2000 at 65 FR 18365.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–14809 Filed 6–12–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10758, et al.]

Proposed Exemptions; Goldman, Sachs & Co.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638,

200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Goldman, Sachs & Co., Located in New York, New York

[Application No. D–10758]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities between certain affiliates of Goldman, Sachs & Co. (Goldman) which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, Goldman, or a Foreign Affiliate, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

(2) The terms of any transaction are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to a Plan solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder, if the 1934 Act, rules, or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable

tax withholdings)[1] had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded;[2]

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of Section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of the exemption in the course of engaging in a securities lending transaction, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II—General Conditions

A. The Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

C. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions;

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of the exemption have been met, except that—

(1) a party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period; and

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph D. unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) the Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

[1] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

[2] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

Section III—Definitions

A. The term ''affiliate'' of another person shall include: (1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The term ''Foreign Affiliate'' shall mean an affiliate of Goldman, Sachs & Co. that is subject to regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, *i.e.,* der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany; (4) the Ministry of Finance and the Tokyo Stock Exchange in Japan; (5) the Australian Securities & Investments Commission (the ASIC) in Australia; or (6) the Swiss Federal Banking Commission in Switzerland.

C. The term ''security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

Effective Date: This proposed exemption, if granted, will be effective as of April 15, 1999.

Summary of Facts and Representations

1. Goldman, Sachs & Co. (*i.e.,* Goldman), a New York limited partnership, is a wholly owned subsidiary and the principal operating subsidiary of The Goldman Sachs Group, Inc. (the GS Group), a Delaware corporation. Goldman, one of the largest full-line investment services firms in the United States, is registered with and regulated by the SEC as a broker-dealer and as an investment adviser, is registered with and regulated by the Commodity Futures Trading Commission (the CFTC) as a futures commission merchant, is a member of the New York Stock Exchange (the NYSE) and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. (the NASD). As of August 27, 1999, the GS Group had $236.3 billion in assets and $8.6 billion in equity.

Goldman has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (*i.e.,* the Foreign Affiliates), and their respective regulating entities, are as follows:

(a) Goldman Sachs Canada, located in Toronto, is subject to regulation in Canada by the Ontario Securities Commission, as well as the Investment Dealers Association, a self-regulatory organization;

(b) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), both located in London, are subject to regulation in the United Kingdom by the Securities and Futures Authority;

(c) Goldman, Sachs & Co. oHG, located in Frankfurt, is subject to regulation in Germany by the Deutsche Bundesbank and the Bundesaufsichtsamt fuer das Kreditwesen (*i.e.,* the BAK);

(d) Goldman Sachs (Japan) Ltd., located in Tokyo, is subject to regulation in Japan by the Ministry of Finance and the Tokyo Stock Exchange;

(e) Goldman Sachs Australia, LLC (GS Australia), located in Sydney, is subject to regulation in Australia by the Australian Securities & Investments Commission (*i.e.,* the ASIC); and

(f) Goldman, Sachs & Co. Bank, located in Zurich, is subject to regulation by the Swiss Federal Banking Commission.

Goldman requests an individual exemption to permit the Foreign Affiliates identified above, as well as those others who, in the future, may be subject to governmental regulation in Canada, the United Kingdom, Germany, Japan, Australia, or Switzerland, to engage in the securities transactions described below with employee benefit plans (i.e., the Plans). The proposed exemption is necessary because the Foreign Affiliates may be parties in interest with respect to the Plans under the Act, by virtue of being a fiduciary (for assets of the Plans other than those involved in the transactions) or a service provider to such Plans, or by virtue of a relationship to such fiduciary or service provider.

2. Goldman represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. Goldman further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets.

With respect to Canada, the United Kingdom, Japan, and Australia, all these countries have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that Goldman, Sachs & Co. oHG has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, *e.g.,* on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Goldman, Sachs & Co. oHG by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Goldman, Sachs & Co. oHG. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

With respect to Switzerland, the powers of the Swiss Federal Banking

Commission include licensing banks, issuing directives to address violations by or irregularities involving banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. The Swiss Federal Banking Commission exercises oversight over Swiss banks, such as Goldman, Sachs & Co. Bank, through independent auditors known as ''Recognized Auditors,'' which act on behalf of the Commission under detailed statutory provisions. Each Swiss bank, including Goldman, Sachs & Co. Bank, must appoint a recognized Auditor and notify the Swiss Federal Banking Commission of an intent to change its auditor. The Recognized Auditor may take action within a bank as deemed necessary or as instructed by the Swiss Federal Banking Commission and must inform the Commission of supervisory matters. The Swiss Federal Banking Commission insures that Goldman, Sachs & Co. Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. The Swiss Federal Banking Commission reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the Recognized Auditor.

The Swiss Federal Banking Commission obtains information on the condition of Goldman, Sachs & Co. Bank and its foreign offices and subsidiaries by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the Recognized Auditor. The Swiss Federal Banking Commission also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposures from Goldman, Sachs & Co. Bank.

Swiss banking law mandates penalties to insure correct reporting to the Swiss Federal Banking Commission. Recognized Auditors face penalties for gross violations of their duties in auditing, or reporting misleading information, omitting essential information from the audit report, failing to request pertinent information or failing to report to the Swiss Federal Banking Commission.

With respect to Australia, GS Australia is subject to regulation primarily by the ASIC, and upon being recognized as a participating organization, by the Australian Securities Exchange Limited (the ASX). Until being recognized as a participating organization by the ASX, GS Australia will be subject to ASX regulation by the ASIC. The rules of the ASX require each firm that employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of the ASX set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the ASX impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting, and recordkeeping requirements, to the effect that required records must be produced at the request of the ASIC. Finally, the rules and regulations of the ASX and the ASIC impose potential fines and penalties on broker-dealers, establishing a comprehensive disciplinary system.

Goldman represents that, in connection with the transactions covered by this proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (as discussed further in Paragraph 6, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

Principal Transactions

3. Goldman represents that the Foreign Affiliates operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business as broker-dealers or banks and engage in purchases and sales of securities, including options on securities, with their clients. Such trades are referred to as principal transactions. Goldman represents that the role of a broker-dealer in a principal transaction in the subject foreign countries is virtually identical to that of a broker-dealer in a principal transaction in the United States.

Goldman requests an individual exemption to permit the Foreign Affiliates to engage in principal transactions with the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 75–1 (PTE 75–1, 40 FR 50845, October 31, 1975), Part II.[3] Goldman states that because PTE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the principal transactions at issue would fall outside the scope of relief provided by PTE 75–1.[4]

4. Goldman represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, Plans have increasingly invested in foreign equity and debt securities, including debt securities issued by foreign governments. Thus, Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with the Foreign Affiliates.

5. Under the conditions of this proposed exemption, as in PTE 75–1, Part II, the Foreign Affiliate must customarily purchase and sell securities for its own account in the ordinary course of its business as a broker-dealer or bank. The terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. Neither the Foreign Affiliate nor an affiliate thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. In addition, the Foreign Affiliate will be a party in interest or disqualified person with respect to the Plan assets involved in the principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (*i.e.,* a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

6. Goldman represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these principal

[3] The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of Part 4 of Title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

[4] PTE 75–1, Part II, provides an exemption, under certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

transactions through a U.S. registered broker or dealer intermediary.

The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) the employee benefit plan has total assets in excess of $5 million, or

(c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term ''major U.S. institutional investor,'' as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million.[5] Goldman represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Goldman represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 must, among other things:

(a) provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) effecting the transactions, other than negotiating their terms;

(2) issuing all required confirmations and statements;

(3) as between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;[6]

(5) receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act;[7] and

(6) Participating in all oral communications (*e.g.,* telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

Extensions of Credit

7. Goldman represents that a normal part of the execution of securities transactions by broker-dealers on behalf of clients, including employee benefit plans, is the extension of credit to clients so as to permit the settlement of transactions in the customary three-day settlement period. Such extensions of credit are also customary in connection with the writing of option contracts.

Goldman requests that the proposed exemption include relief for extensions of credit to the Plans by the Foreign Affiliates in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTE 75–1, Part V, only for transactions between plans and U.S. registered brokers or dealers.[8]

8. Under the conditions of this proposed exemption, as in PTE 75–1, Part V, the Foreign Affiliate may not be a fiduciary with respect to the Plan assets involved in the transaction. However, an exception to such condition would be provided herein, as in PTE 75–1, if no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable foreign law, in the country where the particular Foreign Affiliate is domiciled.

Securities Lending

9. The Foreign Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

Goldman requests an exemption for securities lending transactions between the Foreign Affiliates and the Plans under terms and conditions equivalent to those required in PTE 81–6 (*see* Footnote 2). Because PTE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTE 81–6.

10. The Foreign Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. Goldman represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of

[5] Note that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by an SEC No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

[6] Goldman represents that all such requirements relating to record-keeping of principal transactions would be applicable in respect of any Foreign Affiliate in a transaction that would be covered by this proposed exemption.

[7] Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.,* clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[8] PTE 75–1, Part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered brokers or dealers that are parties in interest with respect to such plans.

return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (*e.g.,* from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash, irrevocable bank letters of credit, or high quality liquid securities, such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, neither the Foreign Affiliate nor an affiliate of the Foreign Affiliate will have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the Foreign Affiliate (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United States. The collateral will have, as of the close of business on the business day preceding the day it is posted by the Foreign Affiliate, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same).

14. The loan will be made pursuant to a written Loan Agreement, which may be in the form of a master agreement covering a series of securities lending transactions between the Plan and the Foreign Affiliate. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Earnings generated by non-cash collateral will be returned to the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of any applicable tax withholdings) had it remained the record owner of such securities.

16. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate will deliver additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent.

17. Before entering into a Loan Agreement, the Foreign Affiliate will furnish to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by PTE 81–6, as it may be amended or superseded. In the event that the Foreign Affiliate fails to return the securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with replacing the borrowed securities. The Foreign Affiliate is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral (the value of which shall be determined as of the date the borrowed securities should have been returned to the Plan), plus interest at a reasonable rate as determined in accordance with an independent market source. If replacement securities are not available, the Foreign Affiliate will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan, plus (b) all the accrued financial benefits derived from the beneficial ownership of such borrowed securities as of such date, plus (c) interest at a reasonable rate determined in accordance with an independent market source from such date to the date of payment. The amounts paid shall be reduced by the amount or value of the collateral determined as of the date the borrowed securities should have been returned to the Plan. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act [9] and the

[9] Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

regulations promulgated under 29 CFR 2550.404(b)–1.

20. In summary, the applicant represents that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to the principal transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize the same benefits of efficiency and convenience which such Plans could derive from principal transactions with U.S. registered broker-dealers or U.S. banks, pursuant to PTE 75–1, Part II;

(b) With respect to extensions of credit in connection with purchases or sales of securities, the proposed exemption will enable the Foreign Affiliates and the Plans to extend credit in the ordinary course of the Foreign Affiliate's business to effect agency or principal transactions within the customary three-day settlement period, or in connection with the writing of option contracts, for transactions between plans and U.S. registered brokers or dealers, pursuant to PTE 75–1, Part V;

(c) With respect to securities lending transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions between plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTE 81–6; and

(d) The proposed exemption will provide the Plans with virtually the same protections as those provided by PTE 75–1 and PTE 81–6.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Washington County Hospital Association Employees' Cash Balance Plan (the Plan), Located in Hagerstown, Maryland;

[Application No. D–10839]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past contribution by Washington County Hospital Association (the Hospital) to the Plan of certain publicly-traded securities (the Securities), provided: (a) the contribution was a one-time transaction; (b) the Securities were valued at their fair market value as of the date of the contribution, as determined by an independent broker; (c) no commissions were paid in connection with the transaction; and (d) the Securities represented less than 5% of the assets of the Plan at the time of the contribution.

Effective Date: If the proposed exemption is granted, the exemption will be effective June 18, 1998.

Summary of Facts and Representations

1. The Hospital is a tax-exempt hospital described in section 501(c)(3) of the Code. The Plan, which is established and maintained by the Hospital, is a defined benefit plan that currently has 1,951 participants and had assets of $27,896,007 as of July 31, 1999. The Plan's assets are held by Hagerstown Trust Company, a Maryland Banking Corporation, as custodian.

2. Marshfield Associates (Marshfield) is one of four investment managers that invest assets of the Plan. Marshfield also manages a fund known as the Washington County Hospital Pension Restricted Fund (the Fund). The Fund is a non-trusteed, non-qualified corporate internal fund of the Hospital and was established by the Hospital's Board of Trustees for the purpose of holding future contributions to the Plan. The assets in both the Plan and the Fund that are managed by Marshfield are subject to the same investment guidelines and principles. The applicant represents that at no time have any assets of the Fund been applied by the Hospital for any purpose other than funding ERISA-qualified pension benefits for the Hospital's employees. Marshfield represents that the fees it collected from the accounts it manages for the Hospital for the second quarter of 1998 through the second quarter of 2000 represent, in the aggregate, less than one percent of the total fee revenues collected by Marshfield for that same period.

3. On June 9, 1998, the Hospital sent a letter to Marshfield directing them to transfer $821,087 from the Fund's account to the Plan's account. The Hospital had requested the transfer in order to satisfy its required minimum funding contribution to the Plan for the fiscal year ending June 30, 1998. Accordingly, on June 18, 1998, Marshfield transferred Securities valued at approximately $745,100 from the Fund to the Plan, and on June 23, 1998, transferred $75,987 of cash from the Fund to the Plan. The total value of assets transferred to the Plan was $821,087. The Securities consisted of fixed income securities, *e.g.,* corporate bonds and notes, valued as of June 18, 1998 at approximately $328,000, and publicly-traded equity securities valued as of June 18, 1998 at approximately $417,100. The Securities represent less than 3% of the total assets of the Plan.

4. The Securities consisted of a BankAmerica Corporate Subordinated Note, paying interest at 9.20%, due May 15, 2003, with a market value of $112,740, as of June 18, 1998; a Honeywell, Inc. Bond paying 8.625%, due April 15, 2006, with a market value of $115,100, as of June 18, 1998; and MCI Communications Corporation Notes, paying 6.25%, due March 23, 1999, with a market value of $100,160, as of June 18, 1998. In addition, the Securities included 1,200 shares of Gannett, Inc., valued at $79,725, as of June 18, 1998; 4,000 shares of Pepsico, Inc., valued at $167,500, as of June 18, 1998; and 3,600 shares of Student Loan Corporation, valued at $169,875, as of June 18, 1998. For purposes of ascertaining the values of the Securities on June 18, 1998, Marshfield represents that Susan Neuwirth, its assistant portfolio manager for the Hospital accounts, consulted Bloomberg, L.P., an independent pricing service.

5. Ms. Elise Hoffman (Ms. Hoffman), a Principal of Marshfield, has represented that the Hospital contacted Marshfield on June 9, 1998, to make the transfer from the Fund to the Plan. Ms. Hoffman represents that she consulted with Mr. Steven Barnhart, an Executive of the Hospital, in order to determine whether the Hospital had a preference as to whether cash or securities should be transferred. Mr. Barnhart informed Ms. Hoffman that the Hospital was indifferent as to which was transferred to satisfy the contribution amount. Ms. Hoffman represents that it was Marshfield's view that transferring the Securities would be financially better for the Plan than first converting them into cash. Each of the equity and debt instruments had been identified by Marshfield's research department as high quality holdings with potential for future appreciation and/or attractive long-term returns. But for the need to transfer assets out of the Fund, Marshfield would have continued to hold the Securities in the Fund as of the date of the transfer. In addition, transferring the Securities rather than the cash proceeds of any sale of such Securities would provide the Plan with immediate investment in the financial markets and result in savings in

transaction costs associated with a reacquisition of the same or equivalent securities. Thus, Ms. Hoffman represents that Marshfield believed it would be a prudent course for the Plan to receive the Securities from the Fund directly and to continue to hold them.

6. PricewaterhouseCoopers LLP (PWC) in Baltimore, Maryland, represents that PWC is the certified public accounting firm for the Plan. Mr. William L. Stulginsky, a Partner with PWC, represents that in the process of preparing the Plan's audit for 1998, it came to PWC's attention that the Employer had contributed the Securities to the Plan. PWC informed the Hospital that an in-kind contribution of the Securities to the Plan would constitute a prohibited transaction. The Hospital had believed, based upon conversations with Marshfield as described in rep. 5, above, that the transfer of the Securities to the Plan was permitted. To resolve this apparent contradiction, the Hospital contacted its attorneys, Venable, Baetjer and Howard, LLP (Venable). Venable reviewed the transaction and informed the Hospital that the contribution constituted a prohibited transaction under section 406 of the Act.[10] The Hospital thereupon established procedures to prevent future in-kind contributions to the Plan, and Venable followed up with the Hospital in resolving this issue by filing a request for the exemption proposed herein.

7. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The contribution was a one-time transaction; (b) no commissions were paid by the Plan in connection with the transfer of the Securities; (c) the Plan's independent investment manager, Marshfield, determined that the transaction was appropriate for and in the best interests of the Plan; (d) Marshfield consulted Bloomberg, L.P., an independent pricing service for purposes of ascertaining the values of the Securities on June 18, 1998, the date of transaction; and (e) when the prohibited transaction was discovered by the Plan's independent C.P.A. firm, the applicant requested the exemption proposed herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[10] The Department directs interested persons to ERISA Advisory Opinion 81–69A (dated July 28, 1981) for the principle that contributions in-kind that relieve an employer of an obligation to make cash contributions to a plan are prohibited exchanges (unless otherwise exempt).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–14808 Filed 6–12–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee; Notice of Meeting

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issuers and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATES: June 23, 2000, 11 a.m. EDT.

For International Watch Information, Contact: Kathleen A. Blank, Attorney/Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meeting/Conference Call: This advisory committee meeting/conference call of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above. Records will be kept of all International Watch meetings/conference calls and will be

available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 7, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–14835 Filed 6–12–00; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Visual Arts Section (*Creativity & Organizational Capacity catgories*)—July 10–13, 2000, Room 716. A portion of this meeting, from 2 p.m. to 3 p.m. on July 12th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on July 10th, from 9 a.m. to 6 p.m. on July 11th, from 9 a.m. to 2 p.m. and 3 p.m. to 6 p.m. on July 12th, and from 9 a.m. to 5 p.m. on July 13th will be closed.

Literature section (*Creativity & Organizational Capacity categories*)—July 17–19, 2000, in Room 708. A portion of this meeting, from 11 a.m. to 1 p.m. on July 19th, will be open to the public for discussion of policy, guidelines, and needs of the field. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on July 17th and 18th and from 9 a.m. to 11 a.m. and 1 p.m. to 5 p.m. on July 19th will be closed.

Music section A (*Creativity & Organizational Capacity categories*)—July 17–20, 2000 in room 716. A portion of this meeting, from 10 a.m. to 12 p.m. on July 20th, will be open to the public for discussion of field needs, leadership initiatives, and guidelines. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on July 17th through 19th and from 9 a.m. to 10 a.m. on July 20th, will be closed.

Music section B (Creativity category)—July 31–August 3, 2000 in Room 716. A portion of this meeting, from 4 p.m. to 5:30 p.m. on August 2nd, will be open to the public for discussion of field needs, leadership initiatives, and guidelines. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on July 31st and August 1st, from 9 a.m. to 4 p.m. on August 2nd, and from 9 a.m. to 12 p.m. on August 3, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 7, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–14825 Filed 6–12–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Fellowship Advisory Panel, Music Section (American Jazz Masters category) to the National Council on the Arts will be held on June 20, 2000. The panel will meet by teleconference from 12 p.m. to 2 p.m. in Room 703 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: June 8, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–14935 Filed 6–12–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI; ASLBP No. 97–732–02–ISFSI]

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation); Notice (Revised Notice of Hearing and of Opportunity To Make Oral or Written Limited Appearance Statements)

June 7, 2000.

The Atomic Safety and Licensing Board hereby provides a revised notice that it will convene an evidentiary hearing to receive testimony and exhibits and allow the cross-examination of witnesses relating to certain matters at issue in this proceeding regarding the June 1997 application of Private Fuel Storage, L.L.C., (PFS) for a license under 10 CFR Part 72 to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians (Skull Valley Band) in Skull Valley, Utah. In addition, the Board gives notice that, in accordance with 10 CFR 2.715(a), it will entertain oral limited appearance statements from members of the public in connection with this proceeding.

A. Revised Information Regarding Location of Evidentiary Hearing

As previously noted in its April 19, 2000 notice (65 FR 24,230 (Apr. 25, 2000)), the Board will conduct an evidentiary hearing on certain issues relating to this proceeding, currently scheduled to include contentions Utah

E/Confederated Tribes F, Financial Assurance; Utah H, Inadequate Thermal Design; [1] Utah R, Emergency Plan; and Utah S, Decommissioning, beginning at 9:30 a.m., on Monday, June 19, 2000. Although the physical location of the hearings remains the same as previously announced—Wasatch Room, Mezzanine Level, 150 West 500 South, Salt Lake City, Utah—the Board has been advised, and the public is hereby notified, that this location is now operated as the Sheraton City Centre Hotel Salt Lake City. With the exception of those days in which the Board is hearing oral limited appearance statements in accordance with section B below or otherwise adjourns the hearing to accommodate scheduling or other administrative purposes, the hearing on these issues shall continue from day-to-day until concluded.

The public is further advised that, in accordance with 10 CFR 2.790(b)(6), all or part of the sessions regarding contentions Utah H, Utah E/Confederated Tribes F, and Utah S may be closed to the public because the matters at issue may involve the discussion of confidential proprietary information.

B. Revised Information Regarding Oral Limited Appearance Statement Sessions

In its April 19, 2000 notice, the Board provided a proposed schedule for conducting oral limited appearance statement sessions and urged those members of the public who were interested in making oral limited appearances to preregister by May 31, 2000. Based on the interest shown in those preregistrations, the Board has decided to postpone the sessions previously scheduled for June 30 and July 1 at Tooele, Utah, to a later date. The Board anticipates that during the course of this proceeding it will be in Utah for additional evidentiary or other proceedings and intends to reschedule the oral limited appearance statements in the Tooele area for that time.

Accordingly, the Board revises its April 19, 2000 notice to advise the public that the Board will entertain oral limited appearance statements at the times and locations specified below:

1. *Date: Friday, June 23, 2000.*
Times:

Afternoon Session—1 p.m. to 4 p.m. Mountain Daylight Time (MDT)

Evening Session—7 p.m. to 9:30 p.m. MDT

Location: Sheraton City Centre Hotel Salt Lake City (Note name change), Wasatch Room—Mezzanine Level, 150 West 500 South, Salt Lake City, Utah.

2. *Date: Saturday, June 24, 2000.*
Times: Afternoon Session—1 p.m. to 4 p.m. MDT.
Location: Same as Session 1 above.

C. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party to, or seeking party status in, the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board and/or the parties in their deliberations in connection with the issues to be considered in this proceeding.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be necessary to accommodate the speakers who are present. If, however, all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending times listed in section B above.

The time allotted for each statement normally will be no more than five minutes, but may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section D below and/or the number of persons present at the designated times.

D. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. The Board will continue to accept written requests to make an oral statement, which must be mailed, faxed, or sent by e-mail so as to be received by close of business (4:30 p.m. EDT) on Monday, June 19, 2000. The request must specify the date—June 23 or June 24—and, for the June 23 session, the time on that day—afternoon or evening—during which the requester wishes to make an oral statement. Thereafter, all oral statement requests will be handled by registration on-location at the limited appearance sessions, on a first-come, first-served basis as the scheduled time allows. And in this regard, the Board notes that requests by the same individual to make an oral statement at more than one of the sessions will be entertained at subsequent sessions after the Board has heard from those individuals who have not yet provided the Board with an oral statement.

Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001
Fax: (301) 415–1101 (verification (301) 415–1966)
E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001
Fax: (301) 415–5599 (verification (301) 415–7550)
E-mail: gpb@nrc.gov

E. Submitting Written Limited Appearance Statements and Availability of Documentary Materials

As the Board has noted previously, a written limited appearance statement can be submitted at any time. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman.

Documents relating to the PFS license application at issue in this proceeding currently are on file at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20003–1527, and at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860. Additionally, documents submitted in this proceeding after November 1, 1999, are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through the NRC's Internet Web site Public Electronic Reading Room Link at <http://www.nrc.gov./NRC/ADAMS/index.html>.

For the Atomic Safety and Licensing Board.[2]

[1] This date, the Board received notice by e-mail transmission from counsel for intervenor State of Utah (State) that the State has decided not to pursue litigation of the contention and will be filing a notice of withdrawal of the contention shortly. Assuming this comes to pass, this issue would not be litigated during this evidentiary hearing.

[2] Copies of this notice were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; (3) petitioner William D. Peterson; and (4) the NRC staff.

Dated: Rockville, Maryland, June 7, 2000.

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 00–14887 Filed 6–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Use of Screening Values to Demonstrate Compliance With the Final Rule on Radiological Criteria for License Termination

Purpose: This notice provides supplemental information to clarify the criteria for using screening values to demonstrate compliance with the Nuclear Regulatory Commission's (NRC) Final Rule on Radiological Criteria for License Termination (License Termination Rule (LTR)) which was issued on July 21, 1997, (62 FR 39058).

Background: Acceptable license termination screening values of common radionuclides for building surface contamination were published in the **Federal Register** on November 18, 1998 (63 FR 64132). Screening values of common radionuclides for surface soil contamination were published in the **Federal Register** on December 7, 1999 (64 FR 68395). As discussed in these notices, NRC's DandD computer code provides a method for calculating screening values for radionuclides in soil, and screening values for contamination on building surfaces. NRC used the DandD methodology to derive the building surface contamination screening values in Table 1 of the November 18, 1998, notice and the surface soil contamination screening values in Table 3 of the December 7, 1999, notice. These screening values correspond to levels of radionuclide contamination that would be deemed in compliance with the unrestricted use dose limit in 10 CFR 20.1402 (*i.e.,* 0.25 milliSievert/year, (25 millirem/year)). The values correspond to screening ''derived concentration guidelines'' (DCGLs) for each specific radionuclide based on the methodology described in NRC's draft Regulatory Guide ''Demonstrating Compliance with the Radiological Criteria for License Termination'' (DG–4006). After these screening values were published, several questions arose concerning conditions or criteria under which the screening values would apply. Criteria for determining the applicability of these screening values is provided in the following section.

SUPPLEMENTARY INFORMATION: Sites with surface soil contamination levels below those listed in Table 3 of the December 7, 1999, notice will be deemed acceptable for release for unrestricted use provided that:

1. Residual radioactivity has been reduced to levels that are ''as low as is reasonably achievable'' (ALARA);
2. The residual radioactivity is contained in the top layer of the surface soil (i.e., a thickness of approximately 15 centimeters);
3. The unsaturated zone and the groundwater are initially free of radiological contamination; and
4. The vertical saturated hydraulic conductivity at the specific site is greater than the infiltration rate. (Refer to NUREG/CR–5512, Vol. 1, ''Residual Radioactive Contamination from Decommissioning, Technical Basis for Translating Contamination Levels to Annual Total Effective Dose Equivalent, Final Report, October 1992'' for additional information.) Buildings with surface contamination levels below those listed in Table 1 of the November 18, 1998, notice will be deemed acceptable for release for unrestricted use provided that:

1. Residual radioactivity has been reduced to levels that are ALARA;
2. The residual radioactivity is contained in the top layer of the building surface (*i.e.,* there is no volumetric contamination);
3. The fraction of removable surface contamination does not exceed 0.1. (For cases when the fraction of removable contamination is undetermined or higher than 0.1, users may assume, for screening purposes, that 100 percent of the surface contamination is removable, and therefore the screening values should be decreased by a factor of 10.)

For radionuclides not listed in the Tables 1 and 3, the latest version of the DandD code may be used, without modification of the default values, to derive screening values. However, because the current version of DandD (*i.e.,* version 1) is overly conservative, and DandD version 2 is under development, NUREG/CR–5512, Vol. 3, ''Residual Radioactive Contamination From Decommissioning, Parameter Analysis, Draft Report for Comment, October 1999,'' may be used to determine acceptable screening values. Specifically, Table 5.19 (using a P_{crit} = 0.90) may be used for building surface contamination screening values and Table 6.91 (using a P_{crit} = 0.10) may be used for surface soil screening values.

For site-specific analyses, licensees may use models other than DandD to demonstrate compliance with the LTR provided they can demonstrate that the model and parameters used in that model are appropriate for the site.

For mixtures of radionuclides in soil or on building surfaces, the ''sum of fractions'' rule applies (see 10 CFR Part 20, Appendix B, Note 4).

The NRC staff intends to include Tables 1 and 3 and these criteria governing their use in the Standard Review Plan for decommissioning. Comments on this approach may be submitted within 30 days from the date of this notice to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further information: Contact Dr. Rateb (Boby) Abu-Eid, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5811; fax: (301) 415–5398; or email: *bae@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of June 2000.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material, Safety and Safeguards.

[FR Doc. 00–14839 Filed 6–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Spent Fuel Project Office; Notice of Issuance and Availability of NUREG/CR–6672 Reexamination of Spent Fuel Shipment Risk Estimates

The United States Nuclear Regulatory Commission (NRC) has issued the final report ''Reexamination of Spent Fuel Shipment Risk Estimates,'' NUREG/CR–6672, SAND2000–0234.

The Reexamination evaluates the risks associated with anticipated truck and rail transport of spent fuel under both routine and accident conditions, and concludes that these risks are small. The report was prepared for the Spent Fuel Project Office (SFPO) by Sandia National Laboratories (SNL).

NUREG/CR–6672 is intended for use by risk analysts, scientists, and engineers. A peer review of NUREG/CR–6672 was conducted by Lawrence Livermore National Laboratories, and is available for public review in NRC Agencywide Documents Access and Management System by searching Accession Number ML003720331.

NUREG/CR–6672 is available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L

Street NW (Lower Level), Washington, DC 20555–0001. Copies of NUREG/CR–6672 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328, telephone no. 1–202–512–1800, or the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone no. 1–800–553–6847. Volume 1, Main Report, has been printed in hard copy. Due to color duplication costs, Volume 2, Appendices, is being distributed only on compact disk (CD). The CD also contains Volume 1. Both volumes are available at the NRC web site, *http://www.nrc.gov.* See the link under ''Technical Reports in the NUREG Series'' on the ''Reference Library Page.''

Dated at Rockville, Maryland, this 2nd day of June, 2000.

For the Nuclear Regulatory Commission.

Susan F. Shankman,

Deputy Director, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–14838 Filed 6–12–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:

Rule 19b–4 and Form 19b–4, SEC File No. 270–38, OMB Control No. 3235–0045.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 19(b) of the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78s(b)) requires each self-regulatory organization (''SRO'') to file with the Commission copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO. Rule 19b–4 (17 CFR 240.19b–4) implements the requirements of Section 19(b) by requiring the SROs to file their proposed rule changes on Form 19b–4 and by clarifying which actions taken by SROs are deemed proposed rule changes and so must be filed pursuant to Section 19(b).

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should be approved or if proceedings should be instituted to determine whether the proposed rule change should be disapproved.

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

Twenty-four respondents file an average total of 500 responses per year, which corresponds to an estimated annual response burden of 17,500 hours. At an average cost per response of $2,175, the resultant total related cost of compliance for these respondents is $1,087,500 per year (500 responses × $2,175/response=$1,087,500).

Compliance with Rule 19b–4 is mandatory. Information received in response to Rule 19b–4 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 6, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14817 Filed 6–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27181]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

June 6, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 27, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9677)

Allegheny Energy, Inc. (''Allegheny''), a registered holding company, its subsidiary service company, Allegheny Energy Service Corporation (''Service''), one of its electric utility subsidiary companies, The Potomac Edison Company, and a nonutility subsidiary company, Allegheny Ventures, Inc., all located at 10435 Downsville Pike, Hagerstown, Maryland 21740, and Allegheny's other utility subsidiary companies, West Penn Power Company, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, Monongahela Power Company, 1310 Fairmont Avenue, Fairmont, West Virginia 26554 and Allegheny Energy Supply Company, LLC (''Supply'') (together, ''Applicants''), R.R. 12, P.O. Box 1000, Roseytown, Pennsylvania 15601 have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f)

of the Act and rules 45 and 54 under the Act.

By prior Commission orders dated January 29, 1992, February 28, 1992, July 14, 1992, November 5, 1993, November 28, 1995, April 18, 1996, December 23, 1997, May 19, 1999 and October 8, 1999 (HCAR Nos. 25462, 25481, 25581, 25919, 26418, 26506, 26804, 27030 and 27084) (''Money Pool Orders''), among other things, Allegheny and its subsidiary companies were authorized to establish and participate in a system money pool (''Money Pool'') to be administered by Service. By order dated November 12, 1999 (HCAR No. 27101) (''Financing Order''), among other things, the Commission authorized, through July 31, 2005, Supply to effect short-term borrowings in aggregate outstanding amounts of $300 million, consisting of the issuance of up to $100 million of notes (''Notes'') to Allegheny and up to $200 million of commercial paper (''Paper'') to dealers and Allegheny to enter into credit and counterparty support agreements (''Support Agreements'') for the benefit of Supply in amounts of up to $150 million.

The Applicants state that competitive pressures in the industry have required that the system expand its generating capacity to a level that will allow it to serve a larger customer base. In order to meet the additional capital requirements associated with the expansion, the Applicants request that the Commission modify the authority granted in the Money Pool Orders to include Supply in the Money Pool Additionally, it is requested that the authority granted in the Financing Order be modified to allow for additional financing authority.

In particular, Allegheny proposes to: (1) issue and sell up to $135 million of long-term unsecured notes to banks or other institutions,[1] and (2) enter into Support Agreements for the benefit of Supply in amounts increased from $150 million to $250 million. Supply proposes to: (1) issue and sell up to $400 million of secured and unsecured long-term debt,[2] and (2) issue and sell Notes and Paper and borrow from the Money Pool,[3] each in aggregate outstanding amounts of up to $300 million, provided that its aggregate outstanding short-term debt does not exceed $300 million.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14818 Filed 6–12–00; 8:45 am]

BILLING CODE 8010–01–M

[1] *See Southern Co.,* HCAR No. 27134 (February 9, 2000) (authorizing electric utility holding company to issue unsecured debt and preferred securities).

[2] The record notes that the interest rates, fees and expenses associated with the long-term debt issued by Allegheny and Supply will be comparable to those obtainable by similar utilities issuing comparable securities containing the same or similar terms and maturities.

[3] Supply proposes to lend to and borrow up to $300 million from the Money Pool on the same terms and under the same conditions that are available to current Money Pool members.

Allegheny Energy, Inc., Holding Co. Act Release No. 25481 (February 28, 1992).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24490; 812–12050]

American General Series Portfolio Company 2, et al., Notice of Application

June 7, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain series of the North American Funds (''NAF'') to acquire all of the assets and liabilities of certain series of the American General Series Portfolio Company 2 (''AGSPC2''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: AGSPC2, NAF, The Variable Annuity Life Insurance Company (''VALIC''), and American General Corporation (''American General'').

Filing Dates: The application was filed on March 24, 2000. Applicants agree 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 SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: AGSPC2, VALIC, and American General 2929 Allen Parkway, Houston, Texas 77019; NAF, 286 Congress Street, Boston, Massachusetts, 02210.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regeulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. AGSPC2, a Delaware business trust, is registered under the Act as an open-end management investment company and is comprised of twenty-four series, twenty-two of which are involved in the proposed transactions (the ''Acquired Series''). NAF, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of twenty-five series, twenty of which are involved in the proposed transactions (The ''Acquiring Series''). Ten of the Acquiring Series are newly organized for purposes of the proposed transactions.[1] The Acquiring Series and the Acquired Series are collectively referred to as the ''Series.''

2. VALIC serves as investment adviser to the Acquired Series and is registered under the Investment Advisers Act of 1940 (''Advisers Act''). VALIC has delegated responsibility for the day-to-day management of five of the Acquired Series to American General Investment Management, L.P. (''AGIM''), an investment adviser registered under the Advisers Act. American General Asset Management Corp. (''AGAM'') is the investment adviser for NAF and is registered under the Advisers Act. VALIC, AGIM, and AGAM are wholly-owned subsidiaries of American General.

3. Currently, VALIC and American General's employee pension plan, the American General Retirement Plan (the ''Affiliated Plan''), each hold of record in excess of 5% (in some cases, more

[1] A post-effective amendment to the registration statement for the ten newly created Acquiring Series was filed with the Commission on March 17, 2000, and became effective on May 31, 2000.

than 25%) of the outstanding voting securities of certain of the Acquired Series. VALIC holds its shares for its own account and, thus, may be deemed to have an economic interest in the shares. The Affiliated Plan holds its shares in a fiduciary capacity and does not have an economic interest in these shares.

4. On February 27, 2000, and March 2, 2000, respectively, the board of trustees of each of NAF (the ''NAF Board'') and AGSPC2 (the ''AGSPC Board,'' and together with the NAF Board, the ''Boards''), including in each case a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), approved plans of reorganization between the Acquiring Funds and the Acquired Funds (the ''Plans,'' and the transactions, the ''Fund Reorganizations'').[2] The Fund Reorganizations are expected to occur on June 30, 2000 (the ''Closing Date''). Under the Plans, the Acquiring Series will acquire substantially all of the assets, subject to the liabilities, of the Acquired Series in exchange for shares of designated classes of the corresponding Acquiring Series having an aggregate net asset value (''NAV'') equal to the aggregate NAV of the corresponding Acquired Series' shares, determined as of 4 p.m. Eastern Time on the Closing Date. The aggregate NAV of the Series' shares will be computed in the manner set forth in the Acquiring Series' prospectuses and statements of additional information. Upon consummation of the proposed transactions, each Acquired Series will distribute its full fractional shares of the Acquiring Series *pro rata* to its shareholders of record, determined as of the Closing Date, and the Acquired Series will be liquidated.

5. Applicants state that the investment objective of each Acquired Series and its corresponding Acquiring Series are similar. Applicants also state that the investment restrictions and limitations of each Acquired Series and its corresponding Acquiring Series generally are similar, but in some cases involve differences that reflect the differences in the general investment strategies used by the Series.

6. The Series offer four classes of shares: Class A, Class B, Institutional Class I, and Institutional Class II. The various expenses of each class of shares of the Acquired and Acquiring Series are as follows:

a. *Class A:* Class A shares of both the Acquired Series and the Acquiring Series have a front-end sales load of up to 5.75% (4.75% for the fixed income Acquired Series), but no contingent deferred sales charge (''CDSC''). The Acquired Series and the Acquiring Series generally are subject to a 12b–1 fee of up to 0.25% and 0.35%, respectively (0.15% for the NAF Municipal Bond Fund). Class A shares of the AGSPC2 Growth Lifestyle Fund, the AGSPC2 Moderate Growth Lifestyle Fund, and the AGSPC2 Conservative Growth Lifestyle Fund (collectively, the ''American General Lifestyle Funds'') are not subject to a rule 12b–1 fee, but Class A shares of the corresponding Acquiring Series will be subject to a rule 12b–1 fee of up to 0.35%. Class A shares of the NAF Money Market Fund are not subject to a front-end sales charge or a rule 12b–1 fee.

b. *Class B:* Class B shares of each Acquired and Acquiring Series have no front-end sales load. Class B shares of the Acquired Series have a maximum CDSC of 5%, which decreases by one percentage point each year until the fifth year, when the fee is 1% and zero thereafter. Class B shares of the Acquiring Series have a maximum CDSC of 5% in the first two years, which decreases by one percentage point each year until the sixth year, when the fee is 1% and zero thereafter. For purposes of calculating the CDSC on Class B shares, shareholders of the Acquired Series will be deemed to have held Class B shares of the Acquiring Series since the date the shareholders initially purchased the shares of the Acquired Series. Class B shares of each Acquired and Acquiring Series have a rule 12b–1 fee of up to 1%, except for Class B shares of the American General Lifestyle Funds and the NAF Money Market Fund, which do not have a rule 12b–1 fee. Class B shares of the Acquiring Series and the Acquired Series convert to Class A shares eight and six years, respectively, after purchase. After the Fund Reorganizations, Class B shares will convert to Class A shares six years after purchase.

c. *Institutional Class I:* Institutional Class I shares of the Acquired Series have no front-end sales load, CDSC, or 12b–1 fee, but are subject to a 0.25% administrative services fee. Institutional Class I shares of the corresponding Acquired Series, will have the same characteristics as the corresponding Acquiring Series, except for the corresponding Acquiring Series of the American General Lifestyle Funds, which will not be subject to the 0.25% administrative services fee. All of the Acquired Series have Institutional Class I Shares, except for AGSPC2 Stock Index Fund, AGSPC2 Small Cap Index Fund, AGSPC2 Municipal Money Market Fund, and AGSPC2 Municipal Bond Fund, Institutional Class I Shares will be offered by all of the Acquiring Series, except for NAF Municipal Money Market Fund and NAF Municipal Bond Fund.

d. *Institutional Class II:* Currently, on AGSPC2 High Yield Bond Fund and AGSPC2 Core Bond Fund have Institutional Class II shareholders. The Institutional Class II shares of these Acquired Series have no front-end sales load, CDSC, or rule 12b–1 fee. The Institutional Class II shares of the corresponding Acquiring Series will have the same characteristics as the two corresponding Acquired Series. Shareholders of the Acquired Series will not incur any sales charges in connection with the Fund Reorganizations. American General will pay the expenses of the Fund Reorganizations.

7. The Boards of AGSPC2 and NAF, including in each case a majority of the Independent Trustees, found that participation in the Fund Reorganizations is in the best interests of the shareholders of each of the Acquired and Acquiring Series and that the interests of existing shareholders will not be diluted as a result of the Fund Reorganizations. In approving the Fund Reorganizations, the Boards of AGSPC2 and NAF considered, among other things: (a) The terms and conditions of each Fund Reorganization; (b) the expense ratios of the Acquired Series and the Acquiring Series before the Fund Reorganization and the estimated expense ratios of the

[2] The Acquired Series and Acquiring Series will combine as follows: (1) AGSPC2 Large Cap Growth Fund into NAF Large Cap Growth Fund; (2) AGSPC2 International Growth Fund and AGSPC2 International Value Fund into NAF International Equity Fund; (3) AGSPC2 Large Cap Value Fund into NAF Growth & Income Fund; (4) AGSPC2 Balanced Fund into NAF Balanced Fund; (5) ASPC2 Mid Cap Growth Fund into NAF Mid Cap Growth Fund; (6) AGSPC2 Small Cap Growth Fund into NAF Small Cap Growth Fund; (7) AGSPC2 Strategic Bond Fund into NAF Strategic Income Fund; (8) AGSPC2 Municipal Bond Fund into NAF Municipal Bond Fund; (9) AGSPC2 Money Market Fund into NAF Money Market Fund; (10) AGSPC2 Core Bond Fund and AGSPC2 Domestic Bond Fund into NAF Core Bond Fund; (11) AGSPC2 Mid Cap Value Fund into NAF Mid Cap Value Fund; (12) AGSPC2 Stock Index Fund into NAF Stock Index Fund; (13) AGSPC2 Small Cap Index Fund into NAF Small Cap Index Fund; (14) AGSPC2 Socially Responsible Fund into NAF Socially Responsible Fund; (15) AGSPC2 High Yield Bond Fund into NAF High Yield Bond Fund; (16) AGSPC2 Growth Lifestyle Fund into NAF Aggressive Growth Lifestyle Fund; (17) AGSPC2 Moderate Growth Lifestyle Fund into NAF Moderate Growth Lifestyle Fund; (18) AGSPC2 Conservative Growth Lifestyle Fund into NAF Conservative Growth Lifestyle Fund; (19) AGSPC2 Municipal Money Market Fund into NAF Municipal Money Market Fund; and (20) AGSPC2 Science & Technology Fund into NAF Science & Technology Fund.

Acquiring Series after the Fund Reorganizations; (c) the fact that the costs estimated to be incurred by the Series as a result of the Fund Reorganizations will not be borne by the Series, but by American General; and (d) the tax-free nature of the Fund Reorganizations.

8. The Plans are subject to a number of conditions precedent, including that: (a) the Plans will have been approved by the Boards of each of the Acquired Series and the Acquiring Series and by the shareholders of each of the Acquired Series; (b) each Acquired Series will solicit proxies from its shareholders pursuant to definitive proxy materials filed with the Commission; (c) the applicants will have received an opinion of counsel concerning the federal income tax aspects of the Fund Reorganizations; and (d) applicants will have received from the Commission exemptive relief from section 17(a) of the Act for the Fund Reorganizations. Each Plan may be terminated by mutual agreement of the Boards at any time prior to the Closing Date. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

9. Definitive proxy materials have been filed with the Commission and were mailed to shareholders of each Acquired Series on or about June 1, 2000. A special meeting of the shareholders of each Acquired Series is scheduled to be held on or about June 22, 2000.

Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Series may be deemed affiliated persons and, thus, the Fund Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchasers or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Fund Reorganizations because certain Series may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by VALIC and the Affiliated Plan of more than 5% (in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series, each Acquired Series may be deemed an affiliated person of an affiliated person of the corresponding Acquiring Series.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Fund Reorganizations. Applicants submit that the Fund Reorganizations satisfy the standards of section 17(b) of the Act. Applicants submit that the Fund Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Boards of AGSPC2 and NAF, including in each case a majority of their Independent Trustees, found that participating in the Fund Reorganizations is in the best interests of the shareholders of each of the Series, and that the interests of the shareholders will not be diluted as a result of the Fund Reorganizations. Applicants also note that the exchange of the Acquired Series' assets for shares of the Acquiring Series will be based on the Series' relative NAVs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14849 Filed 6–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42872; File No. SR–Amex–00–18]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change to Raise Equity Options Transaction Fees for Non-Member Broker-Dealers

May 31, 2000.

I. Introduction

On April 7, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change was published for comment in the **Federal Register** on May 10, 2000.[3] The Commission received no comments on the proposal. This order grants accelerated approval of the proposal.

II. Description of the Proposal

The Amex proposes to increase equity options transaction fees for non-member broker-dealer orders. The Amex currently imposes a transaction charge on options trades executed on the Exchange. The charges vary depending on whether the transaction involves an equity or index option and whether the transaction is executed for a specialist or market maker account, a member firm's proprietary account, a non-member broker-dealer, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depends upon the type of account for which the trade is executed. In addition, all three types of charges—transactions, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.[4]

Recently, the Amex eliminated all options transaction, clearance, and floor brokeage fees for customer equity options orders.[5] To offset the elimination of these fees for customer equity options orders, the Exchange raised the equity options transaction fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42752 (May 3, 2000), 65 FR 30154.

[4] The current caps are set at 2,000 contracts for customer trades and 3,000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

[5] *See* Securities Exchange Act Release No. 42675, (April 13, 2000), 65 FR 21223 (April 20, 2000).

from $0.07 to $0.19 per contract side for member firm proprietary orders and from $0.08 to $0.17 per contract side for specialist and market maker orders. To further offset the elimination of options transaction, clearance and brokerage fees for customer equity option orders, the Exchange proposes to increase the equity options transaction fee for non-member broker-dealer orders from $0.07 to $0.19 per contract side. This revised fee will also apply to both LEAPS [6] and FLEX [7] options. Equity options clearance and floor brokerage fees for non-member broker-dealers will remain unchanged at $0.04 and $0.03 per contract side, respectively.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act, which requires a registered national securities exchange to promulgate rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[9] The Commission believes that the proposed increase in the equity options transaction fee for non-member broker-dealer orders is not unreasonable and should not discriminate unfairly among market participants. In addition, the Commission notes that member firm proprietary orders are charged the same options transaction fee as is proposed for non-member proprietary orders.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Approval of the proposal will enable the Exchange to offset the recent elimination of options transaction, clearance, and floor brokerage fees for customer equity options orders in an expeditious manner. The Commission notes that the Exchange recently raised the equity options transaction fee for member firm proprietary orders to help offset the elimination of options transaction, clearance, and floor brokerage fees for customer equity options orders, and no comments were received on that proposal.[10] Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–00–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[6] LEAPS are Long Term Equity Anticipation Securities or options with durations of up to 36 months. *See* Amex Rule 903c.

[7] FLEX options are customized options with individually specified terms such as strike price, expiration date, and exercise style. *See* Amex Rule 900G.

[8] 15 U.S.C. 78f. In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Securities Exchange Act Release No. 42675, (April 13, 2000), 65 FR 21223 (April 20, 2000) (approving SR–Amex–00–15).

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42870; File No. SR–CBOE–97–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, 3, 4 and 5 to the Proposed Rule Change Relating to Eligibility Requirements for Participation on the RAES System

May 31, 2000.

I. Introduction

On August 6, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Retail Automatic Execution System (''RAES'') eligibility requirements for market makers. The proposed rule change was published in the **Federal Register** on August 20, 1997.[3] The Commission received three comment letters on the proposed rule change.[4]

On July 23, 1998, the CBOE submitted Amendment No. 1 to the proposed rule change. [5] On September 28, 1999, the CBOE submitted Amendment No. 2 to the proposed rule change.[6] On December 8, 1999, the CBOE submitted Amendment No. 3 to the proposed rule change.[7] On March 22, 2000, the CBOE submitted Amendment No. 4 to the proposed rule change.[8] Finally, on May 19, 2000, the CBOE submitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 38928 (August 12, 1997), 62 FR 44296.

[4] Letters from James I. Gelbort to the Commissioners, SEC, dated September 7, 1997 (''Gelbort Letter''); Scott Kilrea, President, Letco, Lee E. Tenzer Trading Company, to Jonathan G. Katz, Secretary, SEC, dated February 20, 1998 (''Letco Letter No. 1''); and Scott Kilrea, President Letco, Lee E. Tenzer Trading Company, et al, to Heather Seidal, Division of Market Regulation (''Division''), SEC, dated August 7, 1998 (''Letco Letter No. 2'').

[5] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Heather Seidel, Division, SEC, dated July 22, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the proposal by establishing a floor percentage that may be set by the Market Performance Committee (''MPC'') that limits a market maker's total transactions and contract volume executed on RAES. The CBOE also proposed that the market maker percentages should be established and calculated on a quarterly basis. Amendment No. 1 contained guidelines to be used by the MPC when determining whether to exempt market maker activity on one or more trading days during the applicable calendar quarter and guidelines for the exercise of discretion by the MPC pursuant to Interpretation .01 of the proposed rule change, which permits the MPC to apply the eligibility requirements to fewer than all classes traded at a particular trading station. Finally, the CBOE responded to issues raised in Letco Letter No. 1 (*see supra* note 4).

[6] Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Division, SEC, dated September 23, 1999 (''Amendment No. 2''). In Amendment No. 2, the CBOE amended the proposal to limit its application to those options classes identified by the Exchange as having market makers that trade an inordinate percentage of their transactions on RAES. The Exchange also reiterated its belief that the proposed rule language afforded protections against potential discrimination by the MPC when it determines which trading days to exempt from the percentage calculations because the MPC will not know the identity of market makers from the data it reviews. Finally, the Exchange responded to issues raised in Letco Letter No. 2 (*see supra* note 4).

[7] Letter from Stephanie C. Mullins, Attorney, CBOE, to Kelly Riley, Division, SEC, dated December 7, 1999 (''Amendment No. 3''). In Amendment No. 3, the CBOE amended the proposed rule change to provide an exemption from the proposed RAES percentage requirements for designated primary market makers (''DPMs'') and their designees, when acting in the capacity as a DPM in an option class.

[8] Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Kelly Riley, Division, SEC, dated March 21, 2000 (''Amendment No. 4''). In Amendment No. 4, the CBOE corrected rule language submitted in Amendment No. 3, which failed to reflect the revisions proposed in Amendment No. 2.

Amendment No. 5 to the proposed rule change.[9]

This order approves the proposed rule change, as amended. The Commission is also soliciting comment on Amendment Nos. 1, 2, 3, 4 and 5 to the proposed rule change from interested persons.

II. Description of the Proposal

The CBOE proposes to establish two additional eligibility requirements that market makers must satisfy to be eligible to participate in the RAES system.[10] The Exchange also proposes to clarify that CBOE Rule 8.16 applies to RAES eligibility in all CBOE options except options on the Standard & Poor's 100 Stock index (''OEX''), options on the Standard & Poor's 500 Stock Index (''SPX'') and options on the Dow Jones Industrial Average (''DJX''), which have separate RAES rules.

The Exchange proposes to implement a limit on the percentage of a market maker's overall trades, both in terms of total transactions and contract volume, that a market maker may transact on RAES during a quarterly period. The proposed eligibility requirements, however, will not apply to DPMs.[11] The eligibility requirements have two distinct parts, both of which must be satisfied. First, a market maker's RAES transactions may not exceed a maximum percentage of his or her total transactions for a calendar quarter. Second, a market maker's contract volume resulting from his or her RAES transactions must not exceed a maximum percentage of his or her overall contract volume during a calendar quarter.

These percentages will be determined by the MPC. The MPC's authority to determine the applicable percentages, however, will be limited so that neither of the percentages may be set at less than fifteen percent. In other words, the MPC may not establish a maximum RAES transaction or contact volume percentage under fifteen percent.

Further, the MPC will only implement these eligibility requirements on those options classes that have been identified as having market makers that are not actively fulfilling their market making obligations.[12] If the MPC determines to implement the eligibility requirements on an options class, a regulatory circular will be issued setting forth the applicable percentages and the effective date for the application of the percentages before the beginning of the quarterly period.

The MPC will have the authority to implement the eligibility requirements on those options classes that it identifies as having market makers that are not actively fulfilling their market making obligations on the floor of the Exchange. The factors to be considered by the MPC when determining whether to apply the percentage requirements include complaints from floor brokers or other market makers; the results of routine market performance surveys; data concerning the percentage of RAES trades performed by a particular market maker or market maker trading crowd; or any other factor that the MPC deems relevant.[13]

At the end of each quarter, the market maker transaction and volume percentages will be calculated. The MPC will have the authority to exempt from the percentage tabulations certain trading days. When determining which days to exempt, however, the MPC will not be privy to individual market maker identities. It will consider whether a particular day experienced an unusually high percentage of RAES trades compared to normal trading days and any other relevant factors. Generally, the MPC will exempt market maker activity for any option class on days where the percentage of RAES trades out of total trades exceeds the requirement set for the class by the MPC.

If a market maker is found to be in violation of the eligibility requirements, he or she may be determined ineligible to participate on RAES. In addition, a market maker may be subject to disciplinary or other remedial action by the MPC under paragraph (d) of Rule 8.16. Market makers, pursuant to Chapters XIX and XVII, as applicable, may appeal such actions taken by the MPC.[14]

III. Summary of Comments

The Commission received three comment letters from two commenters on the proposed rule change.[15] One commenter stated that he believed that the proposed rule change was unnecessary.[16] The other commenter, while generally supporting the underlying motivation of the proposed rule change, questioned its application on DPMs[17] and requested that approval of the proposal be postponed until the ramifications on DPMs could be resolved.[18] The Exchange submitted to the Commission a letter in response to the issues raised by one commenter.[19] In addition, the Exchange addressed the issues raised in the comment letters in Amendment Nos. 1, 2, and 3. The following discussion summarizes the issues raised by the commenters and the Exchange's response.

1. Gelbort Letter

In his comment letter, Mr. Gelbort questioned the appropriateness of the proposed rule change and suggested that current Exchange rules should be able to sufficiently address the concerns described by the Exchange relating to market makers who fail to adequately fulfill their market making obligations. Specifically, Mr. Gelbort suggested that by filing the proposal the Exchange implied that it had been unable to enforce the provisions of CBOE Rule 8.7.[20] Mr. Gelbort stated that he believed that other current Exchange rules, if employed effectively, could adequately address the problems identified by the Exchange. For example, according to Mr. Gelbort, CBOE Rule 8.2(a) provides

[9] Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE to Kelly Riley, Division, SEC, dated May 18, 2000 (''Amendment No. 5''). In Amendment No. 5, the CBOE amended the proposed language of Interpretation .01 of Rule 8.16. Specifically, Interpretation .01 is proposed to contain factors to be considered by the MPC when it determines whether to impose the percentage requirements on a particular options class. Further, the Exchange deleted factors proposed in Amendment No. 1, which were to be used by the MPC to determine whether to exempt an options class from the percentage requirements. However, because the proposal, as amended in Amendment No. 2, is no longer proposed to be implemented floor wide but only applied to specific options classes that have been identified by the MPC as having market makers that are not actively fulfilling their market making obligations, the deleted factors were no longer necessary.

[10] RAES is the Exchange's automatic execution system for small (generally less than 50 contracts) public customer market or marketable limit orders. When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the offer; a sell order will sell at the bid. An eligible market maker who is signed onto RAES at the time the order is received will be designated to trade with the public customer at the assigned price.

[11] *See* Amendment No. 3.

[12] *See* Amendment No. 2.

[13] *See* Amendment No. 5.

[14] The Exchange also noted that the MPC might determine to require an ineligible market maker to participate in RAES if there is inadequate participation in a particular options class. *See* CBOE Rule 8.16(c).

[15] *See supra* note 4.

[16] *See* Gelbort Letter.

[17] *See* Letco Letter No. 1.

[18] *See* Letco Letter No. 2.

[19] Letter from Charles J. Henry, President and Chief Operating Officer, CBOE to Jonathan G. Katz, Secretary, SEC, dated October 31, 1997 (''Response Letter''). The Response Letter addressed the issues raised in the Gelbort Letter.

[20] CBOE Rule 8.7 sets forth the obligations of market makers. Pursuant to CBOE Rule 8.7, market makers are required, among other things, to execute transactions that constitute a course of dealings that are reasonably calculated to contribute to the maintenance of a fair and orderly market. Specifically, market makers are required, among other things, to compete with other market makers to improve markets, to make markets, to update market quotations in response to changed market conditions and to price options contracts fairly.

the Exchange with the authority to deny market maker registration for insufficient ability. In addition, according to Mr. Gelbort, CBOE Rule 8.2(b) permits the MPC to suspend or terminate market maker registrations for incompetence. Further, Mr. Gelbort stated, CBOE Rule 8.3 permits the MPC to suspend or terminate market maker appointments when the interests of a fair and orderly market are served. Finally, Mr. Gelbort described the authority granted to the MPC in CBOE 8.60 to hold informal meetings or hearings that may result in remedial actions against market makers and the disciplinary proceedings that the Exchange may institute under Chapter XVII of its rules.

Mr. Gelbort also suggested that the proposed rule change might create inequities associated with its administration. Specifically, Mr. Gelbort raised concerns about the broad authority sought by the Exchange and questioned the apparent lack of numerical limits. Mr. Gelbort pointed out that the broad authority could result in the proposed rule being applied to exclude certain market makers in an arbitrary manner. He also questioned whether the proposed rule could be applied differently to market makers and DPMs.[21] In addition, Mr. Gelbort suggested that because the Exchange has the authority to compel market maker participation on RAES whenever a market maker is present in the crowd during an expiration cycle after the market maker has signed on to RAES once,[22] that market makers would not be able to self-regulate his or her own RAES trading percentage. Further, Mr. Gelbort stated that the proposed rule would not encourage compliance with the marekt making obligations of CBOE Rule 8.7 in all classes allocated to a crowd.

Mr. Gelbort also questioned the effect of changing the phrase from ''in that trading crowd'' to ''at the trading station'' in proposed Rule 8.16(a)(iv). Mr. Gelbort expressed concern that his change in language could allow a future MPC to interpret the phrase as prohibiting market makers standing in one part of the crowd from trading or participating on RAES in all classes allocated to the crowd. According to Mr. Gelbort, some DPMs arrange their stations to make it difficult for all market makers to trade in all of the classes allocated to the station and he questioned the significance of the language change.

Finally, Mr. Gelbort stated that he believed that the proposed rule change is anticompetitive because he believes it condones disregard for the affirmative market making obligations and because it arbitrarily restricts the number of market makers who may choose to interact with RAES-eligible orders. Further, he believed that the Exchange should clarify the problems sought to be addressed by the proposal and to determine whether current Exchange rules adequately address these problems. If, however, the Exchange finds that the proposal is the best gauge for market maker performance, Mr. Gelbort believes that persistent non-compliance should be met with sanctions stronger than exclusion from RAES.

The Exchange responded to Mr. Gelbort's comments in its Response Letter.[23] The following summarizes the Response Letter.

The Exchange expressed its strong disagreement with Mr. Gelbort's suggestion that is proposal was an indication of its inability to enforce CBOE Rule 8.7. According to the Exchange, the proposal should not be read to suggest that it lacks the ability to enforce compliance with CBOE Rule 8.7, but should be considered as an additional incentive for market makers to meet their market making obligations. The Exchange explained that it utilizes a number of current rules to ensure compliance by its market makers. For example, the Exchange stated that it conducts semi-annual crowd evaluations pursuant to CBOE Rule 8.60 during which the MPC speaks to each member of a trading crowd to explain the obligations of market makers. These reviews have led to some trading crowds being restricted in new product allocations and have led to referrals to the Department of Market Regulation for appropriate action when it appears that individual market makers are performing below standard.

The Exchange also stated that it evaluates the performance of individual market makers. The Exchange reviews, on a quarterly basis, whether a market maker is complying with the trading volume requirements of Interpretation .03 of CBOE Rule 8.7.[24] The Exchange stated that the MPC takes progressive remedial actions against market makers for violations of these provisions. In conjunction with the MPC's review, the Department of Market Regulation reviews the 80 percent in-person requirement.[25] According to the Exchange, these reviews seek to ensure that market makers trade in the appointed options. If a market maker is not performing, remedial actions may be taken.

Moreover, according to the Exchange, applications of potential market makers are reviewed. The Exchange's Membership Committee reviews all market maker applications, pursuant to CBOE Rule 8.2(a) and Chapter III of the Exchange's rules. All market maker applicants must successfully complete an examination that measures competence and qualifications. Further, all applicants must attend educational training.

In response to Mr. Gelbort's assertion that the proposal may be inequitably administered because of the broad authority of the MPC to set applicable percentages, the Exchange stated that this flexibility was necessary because the MPC does not yet have experience with setting such limitations. Further, the Exchange believes that the flexibility will enable the MPC to apply appropriate to each class and to exempt trading days as necessary. The Exchange stated that the administration of the rule would not be arbitrary because the same percentages for a particular class will apply to all market makers. Moreover, members economically aggrieved by any MPC decision will be able to appeal such decision pursuant to Chapter XIX of the Exchange's rules.

The Exchange disagreed with Mr. Gelbort's assertion that market makers will be unable to effectively regulate their percentage of RAES trades. While it is true that a market maker is obligated to log on to RAES in specified circumstances, which prevents the market maker from regulating the number of his or her RAES trades, the Exchange believes that a market maker can regulate the number of non-RAES trades by making competitive markets and aggressively competing for order flow. Thus, the Exchange believes that market makers can regulate the percentage of his or her RAES trades by monitoring his or her non-RAES trades. Moreover, the Exchange states that the MPC's authority to exempt certain

[21] As discussed above, DPMs have been specifically exempted from operation of the rule. *See* Amendment No. 3.

[22] *See* CBOE Rule 8.16(b).

[23] *See supra* note 19.

[24] Interpretation .03A of CBOE Rule 8.7 requires a market maker to transact 75 percent of his or her total contract volume in options classes to which he or she has been appointed. Interpretation .03B of CBOE Rule 8.7 requires a market maker to execute at least 25 percent of his or her total transactions in person, and not through the use of orders, provided, however, that for any calendar quarter in which a market maker receives market maker treatment of off-floor orders, the market maker must execute in person, and not through the use of orders, 80 percent of his or her total transactions.

[25] *Id.*

trading days should prevent market makers from failing to satisfy the tests due to unusual market conditions.

In response to Mr. Gelbort's assertion that the proposal would not encourage compliance with the obligation imposed on market makers to make markets in all series of options classes at the trading station, the Exchange states the proposal was not intended for such a purpose. According to the Exchange, the proposed rule change was not meant to encourage compliance with this market maker obligation and that other Exchange rule serve this purpose.

Regarding the proposed change in language from ''in the trading crowd'' to ''at the trading station,'' the Exchange states the terms ''station'' and ''trading crowd'' are synonymous, pursuant to Interpretation .01 to CBOE Rule 8.8. Thus, a future MPC could not change this Interpretation without first submitting a proposed rule change to the Commission for approval.

The Exchange believes that the proposal should provide market makers with an incentive to compete when they are signed onto RAES because failure to actively fulfill their market obligations under CBOE Rule 8.7 could lead to sanctions. The Exchange believes that the proposal complements the other objectives tests to ensure that a market maker fulfills his Rule 8.7 obligations. Further, the Exchange does not believe that the proposal will limit the number of market makers who will be able to actively engage in making markets in their appointed classes. Rather, the Exchange believes that the proposal encourages compliance with CBOE Rule 8.7 and promotes active competition among market makers.

Finally, the Exchange agrees with Mr. Gelbort's observation that persistent non-compliance with the proposal should be met with a stronger sanction than expulsion from RAES. According to the Exchange, suspension from RAES is only one of the alternative sanctions that may be imposed pursuant to proposed paragraph (d) of CBOE Rule 8.16. Specifically, if a member repeatedly violates the proposed rule, the MPC may refer the violations to the Department of Market Regulation for an investigation of the market maker's compliance with CBOE Rule 8.7 generally.

2. Letco Letters

Letco submitted two letters to the Commission in response to the proposed rule change.[26] In both letters, Letco expressed concern about some of the administrative applications of the proposal. Specifically, the commenter questioned the application of the proposal with respect to DPMs. As discussed above, subsequent to these comment letters, the Exchange amended the proposal to exempt DPMs from the proposal rule.[27] Thus, the commenter's concerns regarding DPMs are moot.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5)[29] of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Currently, CBOE Rule 8.16 does not contain any eligibility requirements for participating on RAES that is related to a market maker's trading activity. The Exchange stated that it had learned that some market makers on the floor have relied on their RAES participation to derive a large percentage of their profits and have not been affirmatively fulfilling their market making obligations as set forth in CBOE Rule 8.7. The Exchange explained that RAES was never intended to be a substitute to the normal operation of a traditional market making business. However, it became apparent to the Exchange that participation on RAES had led some market makers to cease to perform their obligations under CBOE 8.7.

To address these problems, the Exchange developed the proposed eligibility requirements. With these requirements, the Exchange seeks to ensure that market makers affirmatively make markets in their allocated classes. The proposal seeks to prevent market makers from relying on order flow from RAES without actively seeking order flow on the floor of the Exchange.

Pursuant to CBOE Rule 8.7, market makers have specified obligations that must be fulfilled. Generally, market makers are required to enter into transactions that constitute a course of dealings ''reasonably calculated to contribute to the maintenance of a fair and orderly market.'' Further, market makers are obligated to continuously engage in dealing for their own accounts when a lack of price continuity exists or when there is a temporary disparity between supply and demand for a particular contract, or when a temporary distortion of the price relationships exists between options contracts of the same class. In addition, market makers are specifically required to: (i) complete with other market makers to improve markets; (ii) make markets, which will be honored to a reasonable number of contracts in all series of options classes at the trading post; (iii) update market quotations in response to changed market conditions; and (iv) price options contracts fairly, within certain perimeters.

As described above, market makers have many important obligations that create a viable marketplace for options contracts, and perform functions that contribute to fair and orderly markets, as well as to liquidity. If market makers are not actively performing these obligations, the integrity of the marketplace is compromised. Customers expect that when they send an order to the CBOE floor that it will be treated in a manner consistent with the requirements of the CBOE rules, and when market makers fail to fulfill their obligations, customers can be negatively impacted.

If market makers are failing to fulfill their obligations as the Exchange described, the market for those securities can be adversely affected because there is not competition from all of the market makers in the trading crowd. This lack of total involvement by the crowd could lead to inferior pricing of customer orders, and could affect liquidity. Moreover, customer orders may be executed in a less timely manner.

Thus, the Commission is satisfied that the proposal addresses these concerns in a manner that is consistent with the Act. Under the proposal, in a particular calendar quarter market makers will be limited in the proportion of RAES transactions that may make up their total transactions and total contract volume. As proposed, the MPC may determine for a particular options class to limit each market maker's transactions and contract volume attributed to trades on RAES to a maximum percentage of each market maker's total transactions and contract volume. The MPC will determine two percentages, one will establish a maximum percentage of a market maker's total transactions for the quarter that may be derived from RAES transactions; the other will establish the

[26] *See* Letco Letter Nos. 1 and 2, *supra* note 4.

[27] *See* Amendment No. 3.

[28] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(5).

maximum contract volume that may be derived from a market maker's RAES transactions. Neither of these percentages may be less than 15 percent.

The Commission believes that these percentages should encourage market makers to actively fulfill their market making obligations. A market maker allocated options that are subject to these percentages requirements is more likely to participate in the floor market because its passive participation by signing onto RAES will be limited based on the market maker's non-RAES transactions. In this way, the proposed rule should act as an incentive to market makers to fulfill their obligations because those who fail to keep their RAES percentage within the maximum percentages will be subject to sanctions, including suspension of RAES participation.

The Commission is satisfied with the 15 percent floor that has been established in the rule. This provision limits the discretion of the MPC by preventing the MPC from establishing percentages that may be too low, and recognizes the importance of technology in Exchange operations. Today, a large amount of orders are routed to RAES for automatic execution.[30] Thus, an unduly restrictive percentage may have unintended consequences that compromise order flow and trading operations. This floor percentage is intended to strike a balance between establishing reasonable percentages to encourage market-makers to fulfill their obligations on the floor while also recognizing the amount of order flow that is routed to the RAES system for execution. The Commission expects that the Exchange will monitor the percentages established by the MPC to ensure that this balance is preserved.

The proposal will only be implemented in those options classes that the Exchange has identified as having market makers that are not actively fulfilling their market making obligations. The Commission believes that this limitation is appropriate and consistent with the Act. There would not be any reason to impose such limitations on market makers who are already actively making markets in their allocated options classes. This proposal provides the MPC with a remedial measure that can be imposed when a problem is identified.

The MPC will have the authority to determine the options classes in which market makers will be subject to the percentage limitations. In determining whether to impose the percentage requirements on a particular options classes, the MPC will consider factors such as complaints from floor brokers or other market makers that certain market makers performance surveys, data concerning the percentage of RAES trades performed by particular market makers, and other relevant factors. The Commission believes that these factors provide the MPC with the appropriate amount of discretion. Because the MPC will consider only relevant data, the limitations on the proportion of RAES trades to a market maker's total trades should only be applied to those options classes that are experiencing market maker problems. The Commission believes that this discretion should provide the MPC with flexibility to implement the eligibility requirements where needed, while also preventing the implementation of these requirements in classes that do not have such a need.

The MPC, at the end of each quarter, will have the authority to exclude from the percentage calculations trading days that may have experienced an unusually high percentage of RAES transactions when compared to normal trading days. In making this decision, the MPC, however, will not be able to identify individual market makers. Thus, the MPC will not be able to make these decisions based on any market maker's identity or volume. This anonymity should help to ensure that the process of excluding days is fair.

As described above, the Commission received three comment letters from two commenters regarding the proposal. The Commission believes that the Exchange adequately addressed the commenters concerns. Specifically, the Commission believes that the proposal does not reflect upon the Exchange's ability to enforce its market making obligations. Rather, the Commission believes that the proposal should enhance the existing regulatory structure of the Exchange. In addition, the Commission is satisfied with the Exchange's assertion that its rules already specifically define the terms ''in that trading crowd'' and ''at the trading station'' as synonymous, and the Commission further agrees that such definitions could only be amended by a rule change approved by the Commission.

The Commission disagrees with Mr. Gelbort's assertion that the proposal is anticompetitive because it condones disregard for affirmative market making obligations and because it arbitrarily restricts the number of market makers that may interact with RAES–eligible orders. On the contrary, the Commission believes that the proposal should encourage market makers to vigorously make markets in their appointed classes. Moreover, the Commission does not believe that the proposal arbitrarily restricts the number of RAES-eligible market makers that may interact with RAES transactions because all market makers will be able to continue to interact with RAES orders so long as their businesses do not place an over-reliance on RAES transactions to the detriment of the business on the floor. Market makers that fulfill their market making obligations on the floor, as well as in RAES, should not be prevented from participating in either trading forum.

Finally, as discussed above both commenters expressed concerns about how the proposal would apply to DPMs. The Exchange has addressed these concerns by exempting DPMs from operation of the rule. DPMs have additional responsibilities along with making markets, such as maintaining the book, participating at all times in automated execution and order handling systems, and responding to competitive developments in areas of market quality and customer service.[31] Thus, a DPM is unable to rely primarily on RAES trades to operate profitably. Therefore, imposing the eligibility requirements on DPMs would be unwarranted.

The Commission finds good cause to accelerate approval of Amendment Nos. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

In Amendment No. 1, the Exchange proposed to prohibit the MPC from requiring that market makers' transaction or contract volume from RAES executions be less than 15 percent of their total transaction or contract volume. By placing a floor on the percentage of a market maker's total transaction and contract volume that it must execute otherwise than on RAES, the Commission believes that the changes proposed in Amendment No. 1 preclude the MPC from establishing eligibility requirements that could actually harm the operations of the floor and the business of the market makers. The Exchange also proposed to apply these market makers eligibility requirements on a quarterly basis. Finally, the Exchange proposed two sets of guidelines for the MPC. The first set of guidelines will be used by the MPC to determine which days to exclude from the eligibility calculations. The Commission believes that these proposed guidelines strengthen the proposal by preventing the MPC from

[30] According to the Exchange, approximately 34% of its order executions take place in RAES.

[31] *See* CBOE Rules 8.80 and 8.81.

considering inappropriate information that could lead to uneven or potentially discriminatory application of the eligibility requirements. The second set of guidelines set forth the factors to be considered by the MPC, pursuant to Interpretation .01, in determining whether to apply the eligibility requirements to fewer than all the option classes traded at a trading station. The second set of guidelines was eliminated by the CBOE in a subsequent amendment.[32]

The Commission believes that the proposals in Amendment No. 1 enhance the proposed rule change. For these reasons the Commission believes that good cause exists, consistent with Section 6(b)(5)[33] and Section 19(b)[34] of the Act, to accelerate approval of Amendment No. 1 to the proposed rule change.

In Amendment No. 2, the Exchange proposed to limit the application of the proposed rule to options classes identified as having market makers that trade an inordinate percentage of their trades on RAES. The Commission believes that allowing the Exchange to limit application of the proposal to only certain options classes will reduce the potential for undue burdens to be placed on those options classes that are trading without problems and that have market makers that are actively fulfilling their market making obligations. In addition, the Exchange further explained why it believes that its proposal sufficiently protects against the MPC discriminating against or in favor of any parties when exercising its discretion to exclude certain days from the percentage calculations. The Commission is satisfied that the proposal prevents the MPC from applying the eligibility requirements in a discriminatory fashion. In particular, the Commission believes that, because the data upon which the MPC will base its decision to exclude certain days from the calculation of the eligibility requirement will not identify individual market makers, the MPC will not be able to make such decisions based upon the businesses of the individual market makers on those days. For these reasons, the Commission believes that Amendment No. 2 is consistent with the Act and that good cause exists to accelerate its approval.

The Commission believes that good cause exists, pursuant to Section 6(b)(5)[35] and Section 19(b)[36] of the Act, to accelerate approval of Amendment No. 3 to the proposed rule change. In Amendment No. 3, the Exchange proposed to exempt DPMs from the eligibility requirements. The Commission believes that in light of the additional responsibilities that DPMs must fulfill and due to the fact that these additional responsibilities are required by specific CBOE rules, that it is reasonable to exempt DPMs from the eligibility requirements.

The Commission believes that good cause exists, pursuant to Section 6(b)(5)[37] and Section 19(b)[38] of the Act, to accelerate approval of Amendment No. 4 to the proposed rule change. Amendment No. 4 was technical in nature and only sought to correct the proposed rule language submitted in Amendment No. 3 to make it consistent with the proposed rule language submitted in Amendment No. 2.

Finally, in Amendment No. 5, the Exchange deleted proposed factors that were no longer applicable after the submission of Amendment No. 2. Specifically, in Amendment No. 2, the Exchange proposed to only apply the percentage requirements to those options classes that had a demonstrated need for the limitations. The factors the Exchange proposes to delete in Amendment No. 5 were to be used by the MPC to determine if options classes should be exempt from the percentage requirements. Because the proposal now only applies the percentage requirements to those options classes with a demonstrated need, these factors are no longer appropriate. In addition, the Exchange proposed to add factors to be used by the MPC to determine which options classes should be subject to the percentage requirements. The Commission believes that the factors, as described above, provide the Exchange with appropriate discretion to determine which options should be subject to the limitations. Therefore, the Commission believes that good cause exists, pursuant to Section 6(b)(5)[39] and Section 19(b)[40] of the Act, to accelerate approval of Amendment No. 5.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, 4, and 5, including whether Amendment Nos. 1, 2, 3, 4 and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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–97–37 and should be submitted by July 5, 2000.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the amended proposed rule change (SR–CBOE–97–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14850 Filed 6–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42900; File No. SR–OCC–00–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend OCC's By-Laws Relating to Clearing Member Representatives

June 5, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on April 6, 2000, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[32] *See* Amendment No.5

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78S(b).

[37] 15 U.S.C 78f(b)(5).

[38] 15 U.S.C. 78s.

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78s(b).

[41] 15 U.S.C. 78s(b)(2)

[42] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates a requirement in OCC's By-Laws that requires clearing members to designate a specific individual (a ''designee'') as eligible for service as a member director or a member of the nominating committee. Instead, the amended By-Laws will provide that a member director or a member of the nominating committee must be a ''representative'' of a clearing member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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 Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to eliminate an OCC By-Law requirement that clearing members must designate a specific individual (a ''designee'') to be eligible for service as a member director or a member of the nominating committee. Instead, OCC believes that it would be more administratively efficient to require that a member director or a member of the nominating committee must be a ''representative'' of a clearing member. A ''representative'' is defined as a director, senior officer, principal or general partner of a clearing member. The term ''designee'' is being deleted from Article I, Section 1 of OCC's by-laws and conforming changes are being made to Section 2, 4, and 5 of Article II of OCC's By-Laws.

In addition, the term ''elected members'' as used with respect to the nominating committee is being deleted since all nominating committee members are elected. The term ''members'' is being used instead. This change is being made to Section 4, 5, and 12 of Article III and Section 3 of Article VII and to Sections 1, 2, and 3 of the Stockholders Agreement.

OCC also proposed to make other additional technical and non-substantive changes. Section 4 of Article III is being amended to provide that the terms of Class I of the nominating committee expire in odd numbered years and that the terms of Class II expire in even number years. Section 5 of Article III is also being amended to provide that OCC may transmit rather than mail the list of nominees to clearing members to accommodate other means of distribution.

OCC believes that the proposed rule change is consistent with Section 17a of the Act because the rule change eliminates administrative inefficiencies with no adverse impact to clearing member representation on OCC's Board of Directors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iv)[3] of the Act and pursuant to Rule 19b–4(f)(4)[4] promulgated thereunder because the proposal effects a change in an existing service of an OCC service that does not adversely affect the safeguarding of securities or funds in OCC's custody or control and does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[5]

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, 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–00–03 and should be submitted by July 5, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14819 Filed 6–12–00; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78s(b)(3)(A)(iv).

[4] 17 CFR 240.19b–4(f)(4).

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 26, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7405
Date Filed: May 23, 2000
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0280 dated 23 May 2000
Expedited Composite Resolution 506
Special Surcharge Resolution from Japan
(Except USA/US Territories)
Intended effective date: 1 July 2000

Docket Number: OST–2000–7406
Date Filed: May 23, 2000
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0281 dated 23 May 2000

Expedited Composite Resolution 506
Special Surcharge Resolution from Japan
(USA/US Territories)
Intended effective date: 1 July 2000

Dorothy Y. Beard,
Federal Register Liaison.

[FR Doc. 00–14880 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–06–C–00–CRW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yeager Airport, Charleston, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 13, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA Eastern Region, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tim Murnahan, Assistant Director of The Central West Virginia Regional Airport Authority at the following address: 100 Airport Road, Suite 175, Charleston, WV 25311–1080.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central West Virginia Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Kenneth Kroll, AIP/PFC Team Leader, FAA Eastern Region, (AEA–610), 1 Aviation Plaza, Jamaica, NY 11434–4809, (718) 553–3357. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 2, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Central West Virginia Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 30, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–0C–CRW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2001.

Proposed charge expiration date: August 1, 2002.

Total estimated PFC revenue: $1,107,054.

Brief description of proposed projects(s):

—Acquire two snow plows
—Benefit cost Analysis
—Main Terminal Apron Expansion
—Acquire Snow Broom
—Environmental Assessment—Runway Safety Areas
—Emergency Generator connections
—Expand Main Terminal Building
—Two Loading bridges
—Passenger Access Tunnel

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

Under FAR Part 135—Charter Operators for hire to the general public
Under FAR Part 121—Charter Operators for hire to the general public

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York, 11434–04809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in New York City, NY on June 2, 2000.

Thomas Felix,
Manager, Planning and Programming, Eastern Region.

[FR Doc. 00–14864 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ACE–00–23.613–01]

Proposed Issuance of Policy Memorandum, Material Qualification and Equivalency for Polymer Matrix Composite Material Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This document announces an FAA proposed general statement of policy applicable to the type certification of normal, utility, acrobatic, and commuter category airplanes. This document advises the public, in particular manufacturers of normal, utility, acrobatic, and commuter category airplanes, of additional information related to material qualification and equivalency for polymer matrix composite material systems. This notice is necessary to advise the public of FAA policy and give all interested persons an opportunity to present their views on the policy statement.

DATES: Comments submitted must be received no later than July 13, 2000.

ADDRESSES: Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT** at Federal Aviation Administration, Small Airplane Directorate, ACE–111, Room 301, 901 Locust, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lester Cheng, Federal Aviation Administration, Small Airplane Directorate, ACE–111, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone (816) 329–4120; fax 816–329–4090; e-mail: lester.cheng@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposed policy statement, ACE–00–23.613–01, by submitting such written data, views, or arguments as they desire. Comment should be marked, ''Comments to policy statement ACE–00–23.613–01,'' and be submitted in duplicate to the above address. The Manager, Small Airplane Directorate, will consider all communications received on or before the closing date for comments.

Background

This notice announces the availability of the following proposed policy

memorandum, ACE–00–23.613–01, for review and comment. The purpose of this memorandum is to address certification projects initiated after the final date of the memorandum. Certification projects already in work do not necessarily need to comply.

Effect of General Statement of Policy

The FAA is presenting this information as a set of guidelines appropriate for use. However, this document is not intended to establish a binding norm; it does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. The FAA Aircraft Certification Offices (ACO's) that certify normal, utility, acrobatic, and commuter category airplanes should generally attempt to follow this policy when appropriate. Applicants should expect that the certificating officials would consider this information when making findings of compliance relevant to new certificate actions.

Also, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Because this proposed general statement of policy only announces what the FAA seeks to establish as policy, the FAA considers it to be an issue for which public comment is appropriate. Therefore, the FAA requests comment on the following proposed general statement of policy relevant to compliance with 14 CFR part 23, § 23.613, and other related regulations.

General Statement of Policy

1.1 General

In the decades since the introduction of advanced composite materials for use in aircraft, the material qualification has been a costly burden to the airframe manufacturer. For each manufacturer, extensive qualification testing has often been performed to develop the base material properties and allowables at operating environmental conditions, which are used as part of an aircraft's design data, regardless of whether this material system had been previously certificated by other manufacturers. In addition to the use of such data in design, qualification also provides a population basis (*e.g.,* in mean and variability statistics) to continuously ensure stable material production practices by the material supplier. The practice of qualification when performed by each manufacturer for an identical material system represents a massive duplication of effort.

In recent years, NASA, Industry, and the FAA have worked together to develop a cost-effective method of qualifying composite material systems by the sharing of a central material qualification database. This method is built on the existing sections of MIL–HDBK–17–1E, and allows credit for FAA witnessed materials testing performed by third parties such as material vendors or industry consortia. During the development process, the Small Airplane Directorate worked closely with members of the NASA Advanced General Aviation Transport Experiment (AGATE) research consortium to ensure the acceptability of this method of compliance to the applicable airworthiness regulations. Furthermore, the FAA and AGATE have maintained a good communication with the appropriate MIL–HBDK–17 Working Groups by participating in their regular meetings. Valuable thoughts have been shared for the development of this method.

This effort creates a new way of conducting business with airframe manufacturers and material suppliers. It enables composite material suppliers to work with the FAA to qualify their composite material system and receive approval (*i.e.,* material qualification). An airframe manufacturer can then select this approved composite material system to fabricate aircraft parts and perform a smaller subset of testing to substantiate their control of material and fabrication processes tailored to a specific application. The terms ''material equivalency'' will be used in the current context to describe the sampling process for a subset of testing used to confirm equivalent mechanical, physical and chemical properties for a particular material or one undergoing minor changes. For purposes of example, a minor change would be a new material production line, which uses identical raw materials, processes and equipment. Another example of a minor change is the substitution of a new supplier for the same chemical constituent used to fabricate a given fiber or matrix type. A major change would involve more significant differences in the fiber type, matrix resin, and pre-impregnated fabrication process. It is anticipated, significant cost saving can be realized for both the industry and the FAA by sharing the approved central database and standardizing engineering protocol to demonstrate material equivalency.

As a precursor, efforts to establish protocol for shared material databases were documented in a letter, which was disseminated by the Small Airplane Directorate to both FAA certification field offices and industry in 1998. In that letter, the essential concepts of this method have been outlined both in terms of regulatory and technical considerations. As a follow-up, the current memorandum is intended to serve as a policy and guidance for the implementation of this newly developed methodology of qualifying the material systems. It is noted that currently this method pertains only to part 23 aircraft.

1.2 Substantiation of Composite Structures

It has been well recognized that analysis and base material data alone is generally not adequate for substantiation of composite structural designs. The ''building-block approach'' of testing, in concert with analysis, is typically used to fulfill the certification requirement. As outlined in Section 2.1 of MIL–HDBK–17–1E for Polymer Matrix Composites, the building-block approach consists of several levels of activities from both the ''structural complexity'' and ''data application'' considerations. The structural complexity is geometry or form-based, and may include levels of ''constituent,'' ''lamina,'' ''laminate,'' ''structural element,'' and ''structural sub-component.'' On the other hand, the data application is a specific activity performed within the design development and certification process. The specific levels of structural complexity required depend on the distinct purpose of the data application. For example, structural substantiation may use tests and analysis at many different levels of structural complexity, whereas material acceptance may only rely on the lowest levels (*i.e.,* base material properties).

The material qualification and equivalency method discussed in this memorandum is a data application intended to be at the lower-levels of the structural complexity consideration. It includes testing to get mechanical and physical properties at the lamina level. Such tests are performed using laminates with simple ply stacking sequences to characterize the response of the composite material. At this level, the key properties represent un-notched and un-damaged base material strength allowables for loading in tension, compression, and shear. Other important results are the lamina moduli for these load cases. This material qualification testing provides quantitative assessment of the variability of key base material properties, leading to various statistics that are used to establish material acceptance, equivalence, quality control, and design basis.

For clarification purposes, tests at higher levels (*i.e.,* structural laminate, element and sub-component) are typically needed to fulfill the remaining parts of the structural substantiation requirement. As the design moves closer to application specific, the testing program proceeds to a higher level.

Additional structural laminate specimen and element testing is intended to evaluate the ability of the material to tolerate common discontinuities. Key properties include open/filled hole tensile/compression strengths, cutouts, joint bearing and bearing/bypass strengths, bonded joint element and attachments strengths, and impact-damaged element strengths. These strength tests are used to derive the design values of the notched, bolted, bonded, and damaged features. These design values, in general, would be lower than that of the base material strength allowables established via the material qualification testing program. However, as the test element size and complexity increases, it is more costly to generate variability data. As a result, conservative engineering practices are typically applied to utilize statistics collected at the lower (specimen) level of tests.

Furthermore, the structural sub-component (or full scale) testing is typically required to confirm load paths (*i.e.,* validate analyses) and evaluate the behavior and failure mode of increasingly more complex structural assemblies that are considered application specific. At this scale, it is unreasonable to think of shared databases due to unique features in the design of a given product.

2.0 Related Regulatory and Guidance Materials

2.1 Federal Regulations

This new method for material qualification and equivalency has been developed as a means of showing compliance with 14 CFR part 23 requirements for the field of application defined. The regulations that are directly related to this method include:

Section 23.601 General
Section 23.603 Materials and workmanship
Section 23.605 Fabrication and methods
Section 23.613 Material strength properties and design values

Section 23.613 contains specific requirements for material strength properties and design values. Presented below are the requirements that, in particular, are tied to this method:

- ''Material strength properties must be based on enough tests of material meeting specifications to establish design values on a statistical basis.'' [§ 23.613(a)]
- ''Design values must be chosen to minimize the probability of structural failure due to material variability.'' [§ 23.613(b)]. Section 23.613(b) requires that the design values selected to ensure structural integrity need to be characterized by the probability depending on the design configurations. That is, A-Basis for single-load-path design and B-Basis for multiple-load-path.
- ''The effect of temperature on allowable stresses used for design in an essential component or structure must be considered where thermal effects are significant under normal operating conditions.'' [§ 23.613(c)]. Similarly, § 23.603(a)(3) requires ''Take into account the effects of environmental conditions such as temperature and humidity, expected in service.''

As discussed in Section 1.2, the database from the qualification program includes the base material strength allowables, which represent the design basis at the lamina level at appropriate environmental conditions. Design values utilized for any specific application still need to be established via some combination of additional testing programs, rationale engineering assumptions, and validated analyses. Nevertheless, the qualification database serves as a foundation upon which the material can be controlled and design values for higher-level application are derived. For certification purposes, the base material allowable is a subset of the aircraft's type design data.

2.2 Advisory Circulars

The following two FAA advisory circulars (AC's) present recommendations for showing compliance with FAA regulations associated with composite materials:

AC 20–107A—Composite Aircraft Structure
AC 21–26—Quality Control for the Manufacture of Composite Structures

AC 20–107A sets forth an acceptable, but not the only, means of showing compliance with the provisions of 14 CFR parts 23, 25, 27, and 29 regarding airworthiness type certification requirements for composite aircraft structures. Guidance information is also presented on associated quality control and repair aspects.

AC 21–26 provides information and guidance pertaining to an acceptable, but not the only, means of demonstrating compliance with the requirements of 14 CFR part 21 regarding quality control systems for the manufacture of composite structures. This AC also provides guidance regarding the essential features of quality control systems for composites as mentioned in AC 20–107A.

2.3 MIL–HDBK–17

The MIL–HDBK–17 has been developed and is maintained as a joint effort of the Department of Defense (DOD) and the Federal Aviation Administration (FAA). This handbook provides guidance in the development of base material properties (allowables) and design values acceptable to the FAA. This new methodology is derived based on the MIL–HDBK–17–1E (Polymer Matrix Composites Volume 1: Guidance). The sections that are closely related to this method include:

Section 2.3.2 Material qualification test matrices
Section 2.3.3 Material acceptance test matrices
Section 2.3.4 Alternate material equivalence test matrices
Section 8.4.3 Alternate material statistical procedures

For the simplicity of this memorandum, the MIL–HDBK–17–1E can also serve as a reference for most of the terminology used in this document.

For standardization purposes, guidance for material database presentation, both in terms of format and content, has been well outlined in MIL–HDBK–17–2E (Polymer Matrix Composites Volume 2: Materials Properties). Presentation of material data per the guidance set forth in the MIL–HDBK–17 is highly recommended.

2.4 AGATE Document (DOT/FAA Technical Report)

The specific methodology outlined in this memorandum has been developed through the effort of Work Package 3 (Integrated Design and Manufacturing Tasks) of the AGATE program. Technical works have been conducted mainly at the National Institute for Aviation Research (NIAR) facility affiliated with Wichita State University at Wichita, Kansas. Throughout the process, close coordination between the FAA [the Small Airplane Directorate, Technical Center and National Resource Specialist (NRS)] and the NIAR has been maintained to ensure this method is in compliance with the applicable airworthiness regulations.

Application of this method has been demonstrated for the epoxy-based pre-impregnated carbon or fiberglass material systems cured at 250 °F with low-pressure curing/processing cycles. This effort has resulted in an AGATE technical document entitled ''Material

Qualification and Equivalency for Polymer Matrix Composite Material Systems'' where details of this methodology are presented. To enhance the accessibility of this document to the industry in general, an effort is underway by the FAA Technical Center to edit and publish it as a DOT/FAA Report.

3.0 Material Qualification

3.1 Field of Application

The developed material qualification methodology is intended, in general, for polymer matrix material systems. The purposes of this method include:

- To solidify and finalize material and process (M&P) specifications, including specific acceptance criteria for sampling relative to the qualification database
- To quantify base material variability
- To provide a central database with stabilized material processes

Application of this method has been conducted/demonstrated via the effort of the AGATE program. The AGATE program has applied this method to material systems that are characterized by the following specifics:

- Epoxy-based pre-impregnated carbon or fiberglass
- Unidirectional tape or woven fabric
- Cure temperature at 240 °F or higher
- Low-pressure curing/processing cycles (*i.e.,* autoclave and vacuum bagging)

Testing requirements and data reduction procedures needed to certify the composite material system for complying with airworthiness regulations are presented in the AGATE document. The testing defined in the AGATE document represents the minimum requirement. In some cases, unique characteristics of a material system or its application may require testing beyond that defined by this method (*i.e.,* more rigorous procedures and larger qualification databases). In these situations, Aircraft Certification Offices (ACO's) may require additional testing to demonstrate compliance with the applicable airworthiness regulations.

3.2 Qualification Approval Procedures

Material qualification bears the objective of establishing the FAA approved base material properties of an ''original'' material system. Test materials are fabricated using ''original'' process specifications. This effort may be part of ongoing certification programs and can be managed by the appropriate project ACO. In some cases, such as a consortium crossing geographic boundaries, the Small Airplane Directorate may manage this effort.

All specimen shall be fabricated according to the appropriate process specification to the geometry described in the AGATE document. Prior to testing, conformity of the test specimen must be performed by Manufacturing District Inspection Office (MIDO) inspectors at the request of ACO engineers. The MIDO inspector may elect to delegate this responsibility to a Designated Manufacturing Inspection Representative (DMIR) or Designated Airworthiness Representative (DAR).

Testing must be witnessed by the FAA. Witnessing can be performed by ACO engineers, or they may delegate this responsibility to a Designated Engineering Representative (DER) or MIDO inspector.

3.3 Environmental Conditions

In order to substantiate the environmental effects with respect to the material properties, several environmental conditions are defined to represent extreme cases of exposure. The selection of these conditions shall be based on the nature of the material system and its intended application as well.

To illustrate, the conditions defined as extreme cases for the AGATE program are as follows:

- Cold Temperature Dry (CTD) ..... −65° F (±5 °F) with an ''as fabricated'' moisture content.
- Room Temperature Dry (RTD) ..... ambient laboratory conditions with an ''as fabricated'' moisture content.
- Elevated Temperature Dry (ETD) ..... 180° F (±5°F) with an ''as fabricated'' moisture content.
- Elevated Temperature Wet (ETW) ..... 180° F (±5° F) with an equilibrium moisture weight gain in a 85% relative humidity (±5% R.H.) environment.

Properties for less extreme temperature conditions are determined through documented interpolation procedures.

3.4 Material Quality Control

As part of material qualification, physical and chemical property tests are recommended for each batch of material received from the material vendor. These tests should be traceable to each referenced test. Prior to a significant investment in material qualification testing, the quality control procedures of the material vendor should be reviewed to ensure that quality control programs are in place for the fiber and neat resin, as well as pre-impregnation of the material form (*e.g.,* tape or fabric). The recommended testing items (*e.g.,* resin content, fiber areal weight, and gel time), along with the test methods, are presented in the AGATE document.

In order to support the maximum operational temperature (MOT) limit of the material system and the specific data to be used in the statistical design allowable generation, cured lamina physical property tests (*e.g.,* glass transition temperature, fiber/resin volume, and void content) are also required. These tests, along with the test methods, are defined in the AGATE document.

3.5 Batch-to-Batch Variability

For a composite material system base properties (allowables), several batches of material must be characterized to establish the statistically-based material property for each of the material systems. For this qualification method, a minimum of three (3) batches of material are required to establish a B-basis design allowable. For an A-basis design allowable, three (3) batches may also be used, but five (5) batches of material are highly recommended to establish more statistically stable properties. It is noted that the minimum number of batches used in AGATE methodology is less than that recommended in MIL–HDBK–17–1E.

In order to account for processing and panel-to-panel variability, the material system being qualified must also be representative of multiple processing cycles. For this qualification method, each batch of material must be represented by a minimum of two independent processing/curing cycles (*e.g.,* low-pressure autoclave and vacuum bagging). One engineering observation, which led to this AGATE methodology, was that the variation from composite panel processing can be as important as batch-to-batch material variability.

3.6 Property Testing Requirement

The required material property tests are specified in the AGATE document, along with the recommended test method and the required number of batches/replicates per environmental condition (*i.e.,* CTD, RTD, ETW and ETD). In the AGATE document, a format

has been defined to represent the required number of batches and replicates per batch. The format reads: #×#, where the first # represents the required number of batches and the second # represents the required number of replicates per batch. For example, ''3×6'' refers to three batches of material and six specimen per batch for a total requirement of 18 specimen.

To illustrate, the tests required by the AGATE document for qualification at the environmental condition of ''Room Temperature Dry (RTD)'' are listed as follows:

No.	Test	Specimen (RTD)
1.	0° (warp) Tensile Strength	3×4
2.	0° (warp) Tensile Modulus, Strength and Poisson's Ratio.	3×2
3.	90° (fill) Tensile Strength	3×4
4.	90° (fill) Tensile Modulus and Strength.	3×2
5.	0° (warp) Compressive Strength.	3×6
6.	0° (warp) Compressive Modulus.	3×2
7.	90° (fill) Compressive Strength.	3×6
8.	90° (fill) Compressive Modulus.	3×2
9.	In-Plane Shear Strength	3×4
10.	In-Plane Shear Modulus and Strength.	3×2
11.	Short Beam Shear	3×6

3.7 Base Material Allowable Generation

Upon completion of the property testing, the statistical base material allowable can be generated for each mechanical strength property per the data reduction procedure described in the AGATE document. Software for the data reduction procedure has been made available in the form of a disk-file as an attachment to the AGATE document. Raw test values are normalized to a specified fiber volume as the fibers are the primary load-carrying component of the composite material. This provides a consistent basis for property comparisons and generally reduces variability in fiber-dominated properties. The procedure used for this is consistent with that recommended by MIL–HDBK–17–1E.

Proper consideration of the inherent material property variability in composite materials needs to be addressed in assigning design basis value to each mechanical property. Although the statistical procedures presented in the AGATE document may account for most common types of variability, these procedures may not account for all sources of variability.

B-basis and A-basis material allowables are determined for each strength property using the statistical procedures outlined in the AGATE document. The specific procedures used assume a normal distribution for the population and take advantage of pooling of data between environments in calculating statistical variations. The latter is dependent on the assumptions that the failure mode for a given type of test does not vary significantly between environments and that the material variability across environments is comparable. The AGATE document describes the additional statistical tests and engineering data analysis needed to ensure all assumptions are not violated for a given material system. If evidence of deviations from the assumptions exists, more general procedures in MIL–HDBK–17–1E should be followed. For the moduli and Poisson's ratio, the average value of all corresponding tests for each environmental condition is used.

If maximum strain material allowables are required, simple one-dimensional linear stress-strain relationships may be employed. The linear assumption works well for tensile and compressive strain behavior but may produce rather conservative strain values in shear due to nonlinear behavior. More realistic engineering guidelines to derive shear strain allowables are given in MIL–HDBK–17–1E (Section 5.7.6).

3.8 Material Performance Envelope

Referring back to the discussions in Sections 1.2, 2.1, and 3.1, base material strength allowables and elastic moduli generated by the procedures given in the AGATE document serve a purpose in stable composite material control within the industry and certification of specific aircraft products. Standard test methods and accepted statistical data treatment facilitate their use for the former, where a wide segment of the material supplier and aircraft manufacturing industry can share in the cost of generating the database. When it comes to the use of this data for the development and certification of structure for a specific aircraft, complementary test data and analysis is needed to account for the effects of design detail, structural scale, and damage.

Using the statistical allowables, a base material performance envelope can be generated for a material system by plotting these values as a function of temperature. Each specific aircraft application of the qualified material may have a different maximum operational temperature (MOT) limit than those tested for the material qualification. Some applications may require a reduced MOT. For these cases, interpolation may be used to obtain the corresponding basis values at the new application MOT.

Interpolation schemes and examples are presented in the AGATE document. The schemes provided in the document are practical for materials obeying typical mechanical behavior. In most cases, some minimal amount of testing may also be required to verify the interpolated values.

Since unforeseen material property drop-offs with respect to temperature and environment can occur, extrapolation to a higher MOT should not be attempted without additional testing and verification.

4.0 Material Equivalency

For clarification purposes, the terms ''material equivalency'' used in the current memorandum refer to the process of substantiating material properties for purposes of sharing a composite material qualification database and/or demonstrating that minor changes in material production processes have a negligible effect. This is achieved by test sampling and passing the acceptance criteria, which were derived from a larger population of material data.

4.1 Field of Application

Composite material equivalence testing, which constitutes reduced data sampling (*e.g.,* a single batch), may be performed by a manufacturer to establish a link with the original qualification database and associated specifications. Depending on the manufacturer's use of the qualification database, specifications for processing a particular product and the associated design data may even change significantly after establishing the link. For example, if the only intent of a link with the qualification database is to establish a population from which acceptance criteria are derived for standard tests performed in base material control, then significant changes in processing for a particular product may be allowed. On the other hand, if the base material qualification database has greater use in design (*e.g.,* applied in deriving design values), then additional testing may be needed to show equivalency with the process variations. In short, the role of material equivalency testing in certification will depend on details of the particular project.

For example, consider the use of a given material in sandwich construction, which may have process variations (*e.g.,* lower autoclave

pressures) and changes in laminate characteristics resulting from the sandwich panel design configuration (*e.g.,* dimpling of the face-sheets on honeycomb cells). In such a case, standard tests for base material properties in the AGATE approach use flat laminates, which may yield different properties than occur in sandwich panels. If the manufacturer's intended use of the qualification database is limited to control of the base material as purchased, the manufacturer may elect to demonstrate equivalency using original specifications. On the other hand, if the qualification database will have greater use in design, then equivalency testing should expand to consider the effects of product process and design variations on the base material properties. Alternatively, subsequent tests within the building block approach used for certification may also be defined to account for such differences. Again, the role of material equivalency testing in certification will depend on details of the particular project.

The material equivalence testing may also be used to assess the effects of minor changes in constituent(s), the constituent manufacturing process, and/or the resin pre-impregnation process, for the purpose of utilizing the existing material qualification database. This testing evaluates the key properties for test populations large enough to provide a definitive conclusion but small enough to provide significant cost savings as compared to establishing a new database.

Note that MIL–HDBK–17–1E goes beyond the discussions in this memorandum to describe methods for demonstrating alternate material acceptance. The discussion can be found in Section 2.3.4. Although the term equivalence is used in this section of MIL–HDBK–17–1E, the test matrices presented are much more extensive, highlighting additional issues for the problems being addressed (*i.e.*, changes in fiber type, fiber tow size, resin, and pre-impregnated manufacturer). Table 2.3.4.1.3 of this volume covers a wide variety of changes to a material system and highlights the fact that the performance of a material system is determined by both the materials and processes used in its manufacture.

The AGATE methodology of demonstrating material equivalency is derived from MIL–HDBK–17–1E. This methodology only applies to situations with minor changes to the ''original'' material system in terms of material constituents and/or manufacturing processes. These situations may include:

- Identical materials, processed by same manufacturer using identical fabrication process at different locations;
- Identical materials, processed by different manufacturer using a ''follow-on'' process that is equivalent to the ''original'' fabrication process;
- Identical materials, processed by different manufacturer using a ''follow-on'' process that is slightly different to the ''original'' fabrication process;
- Minor changes in constituent(s) and/or constituent manufacturing process, processed by same/different manufacturer using a ''follow-on'' process that is slightly different to the ''original'' fabrication process;
- Combinations of the above.

In summary, the purposes of this equivalency method include:

- To share and make use of the central database by a new user (*i.e.*, original material qualification);
- To continue surveillance of material and process (*e.g.*, Section 5.0 as applied in material quality control);
- To show that minor changes to material and processes do not affect base material properties;
- To make final adjustment on material and process specifications for specific application and demonstrate that it has little affect on base material properties.

4.2 Equivalency Approval Procedures

For the ''follow-on'' applicants to use the database, they need to develop their own material and process specifications based on the ''original'' material and process specifications. The applicants submit these specifications along with the necessary test plans to their geographically responsible ACO for review. In all cases of material equivalency, an ''original'' should exist that contains base material mechanical properties and strength allowables, as well as the chemical and physical properties, for the initially qualified material system.

As is the procedure on any certification program, the ACO reviews the test plans and the updated material/process specifications prior to the initiation of testing. The review of the applicants' specifications should determine if they meet the application limitations outlined in Section 4.1, and are, therefore, candidates for material equivalency testing. Since the basis properties of a composite material system are sensitive to both its material constituents and manufacturing process, vigilant engineering judgement must be exercised during the evaluation process. The fabrication methods of the applicants' structure must meet the applicable airworthiness regulations including, but not limited to, §§ 23.603 and 23.605.

Testing is required to qualify the ''follow-on'' material system by demonstrating material equivalency to the ''original'' material system. Testing must be witnessed by the FAA. Testing requirements, data reduction procedures, and material equivalency criteria/guidance are presented in the AGATE document.

In addition to the base material level coupon testing, certification programs may require some element or sub-component testing in demonstrating equivalency for minor changes in the material production processes over time, which are suspected to have some effect on part manufacturing processes. These requirements will depend on the degree of change as well as on the application (*e.g.*, complexity of the components or parts to be manufactured).

4.3 Equivalency Testing Requirement

As described in Section 4.1, the AGATE material equivalency methodology is derived based on the most compatible situations existing, as discussed in MIL–HDBK–17–1E (*i.e.*, an identical material is used or changes in the material are minor). Based upon the batch-to-batch variability established in the original qualification database, material equivalency testing should be conducted to investigate the processing or panel-to-panel variability inherent in the follow-on manufacturer or location. As a minimum requirement to initiate such an exercise, the material and process controls used to generate the initial database must be known (*i.e.*, the ''original'' material and process specifications or ''pedigree'' must be known). This issue has come up relative to some of the data that has been published in MIL–HDBK–17–2E, and a plan has been initiated to ensure such information is available for data utilization.

The equivalency tests required are presented in the AGATE document along with the recommended test methods and the required number of batches/replicates per environmental condition (*i.e.*, RTD and ETW). One (1) batch of material is the minimum required for this testing program. As with material qualification, two separately processed panels are used in obtaining specimen for strength tests.

To illustrate, the tests required by the AGATE document to demonstrate equivalency under the environmental condition of ''Room Temperature Dry (RTD)'' are listed as follows:

No.	Test	Specimen (RTD)
1.	0° (warp) Tensile Strength	8
2.	0° (warp) Tensile Modulus and Poisson's Ratio.	4
3.	90° (fill) Tensile Strength	8
4.	90° (fill) Tensile Modulus	4
5.	0° (warp) Compressive Strength.	8
6.	0° (warp) Compressive Modulus.	4
7.	90° (fill) Compressive Strength.	8
8.	90° (fill) Compressive Modulus.	4
9.	In-Plane Shear Strength	8
10.	In-Plane Shear Modulus	4
11.	Short Beam Shear	8

4.4 Success Criteria for Equivalency

Results derived from the equivalency testing are compared with the original qualification database. The statistical procedures and the success criteria for equivalency are presented in the AGATE document. As with qualification, the acceptance criteria adopted by AGATE to demonstrate equivalency assumes a normal distribution. If a normal distribution was not confirmed by checks performed as part of the ''original'' material qualification, the acceptance criteria will need to change to reflect the statistical distribution that was adopted for the population. In such a case, the more general procedures in MIL–HDBK–17–1E should be followed.

First, the qualification database shall present the property of interest in terms of ''mean'' and ''standard deviation.'' For base material strength properties, the qualification database also provides B-basis and/or A-basis values, which can be used for purposes of comparison in establishing specific acceptance criteria. In addition, two statistical parameters for sampling need to be defined, and they are: ''α'' (probability of rejecting a good material) and ''n'' (number of specimen to be tested for the property of interest).

A selection of $\alpha = 0.01$, for example, represents 1% of the chance of wrongly rejecting a good material. A higher ''α'' value represents a more conservative criteria, yet at the expense of a higher chance of rejecting a good material. Also, as the number of specimen increases, the chance for the mean of the specimen (tests sample) to appear different from the original qualification data decreases. Statistically, the two parameters reflect the Type I errors in test on either means or minimum individual values. The Type I error refers to the situation of rejecting the null hypothesis when it is true. The B-basis and A-basis values, which were derived in population testing, have limited statistical meaning when assessing the equivalency from a small sample size. However, they may have some engineering value in setting the α for a particular application.

For strength properties, material equivalency is established by using both the means and the minimum individual values as the acceptance criteria. The material equivalence is not acceptable when either one of the two comparisons fails. The ''α'' represents the probability of failing either one of the two, or both, comparisons.

Based on a limited ''round robin'' testing program, the AGATE method currently recommends an ''n'' value of ''8'', and an ''α'' value of ''0.05'' for material equivalency tests to link with the complete material qualification database. As the exposure and experience increase through time, the values for these two parameters may be revised from lessons learned. Also, considering the intrinsic difference both in terms of the nature of material system and the specific of application, the certification offices (ACO's) may adjust this set of values reflecting their unique circumstances.

Although specific criteria are not given, strength properties from equivalency testing should also not be excessively higher than those obtained for the original qualification database. Engineering judgement should be used to detect such increases in base strength, which may affect structural failure modes or reductions in untested strength properties. For example, unnotched (or small notch) tensile strength properties have been found to be inversely related to the tensile residual strength of composite structure with larger flaws.

For modulus, a simple comparison of means is used. The criterion is not satisfied when either the test sample mean is too high or too low in reference to the original maximum/minimum mean of the qualification database.

There are also statistical tests that interrogate the new samples as to their equivalency to the baseline sample qualification database. These can be used as an alternative to the test on means and minimum individual values described above. MIL–HDBK–17–1E recommends the k-sample Anderson-Darling (A–D) statistical test (Section 8.3.2.2) or the ANOVA (analysis of variance) method described in Section 8.4.3.1. The k-sample A–D test can be used for unequal sample sizes that will be encountered when comparing the baseline data to the new data. Discussion on the use of a significance level of ($\alpha = 0.05$ is given in MIL–HDBK–17. The value chosen should be agreed upon by the particular application and should be the same if the ANOVA method is used.

Other alternate tests (if normal distribution is assumed) are to use the F-test to show equivalency of the means (Section 8.3.5.2.2) and Levene's test to show equivalency of the variances (Section 8.3.5.2.1). An ''α'' value for these tests must also be selected.

Successful completion of the equivalency testing allows the applicant to use the properties contained in the original qualification database. In the case when the testing of the first batch fails, a second opportunity using a different batch of material can be allowed for this equivalency testing. In order to limit the undesirable, statistically termed as the Type II error, only permission of retest to the 2nd batch is recommended. The Type II error refers to the situation of accepting the null hypothesis when it is false.

Should the applicant fail criteria for equivalency testing of the second batch, the original base material allowable database can no longer be used, and a new base material allowable database needs to be established per material qualification procedures. Such a scenario requires engineering to identify material and/or processing differences, which led to changes in the base material properties, and the associated update to specifications (*i.e.*, a new material qualification). In addition, careful planning of material procurement, panel fabrication and testing may be considered at the start of a material equivalency exercise to ensure that equivalency testing of a first and second batch can be expanded to be part of a new qualification if required. For example, the material order and panel sizes fabricated for a particular batch of material may be sufficiently large enough to yield additional specimens, as needed for the larger test matrix in a qualification effort.

5.0 Continuous Quality Control

Material supplier and purchaser tests performed as part of a continuous quality control process may be considered a special case of material equivalency testing. In this case, the sample size is typically smaller than recommended for the material equivalence exercise described in Section 4.0. Nevertheless, the tests are typically performed on a per batch basis and a link with the qualification database can be developed using the same statistical methods (Section 4.4).

For purposes of continuous quality control, a recommended ''α'' value of

0.01 (*i.e.,* 1% probability of rejecting ''good'' material) and an ''n'' value of 3 to 5 are appropriate. Note the less stringent requirement here than for obtaining access to the ''original'' qualification database discussed in Section 4.4. In the latter case, all future batches of material are being admitted while in the former case only one batch is under scrutiny. As the exposure and experience along this line increase through time, a new set of values for these two parameters may be provided. Also, considering the intrinsic difference both in terms of the nature of the material system and the specifics of application, the certification offices (ACO's) may adjust this set of values reflecting their unique circumstances.

If quality control testing fails, engineering evaluation can be performed to justify a retest of the same batch of material. As part of this effort, engineers should search for other reasons to believe the material is ''bad'' or identify a problem in specimen fabrication and/or testing. The number of ''retests'' should be limited to one which, from a purely statistical perspective, yields a probability of rejecting good material in two sets of receiving inspection tests for the same batch is only 0.01% for the recommended ''α''.

Issued in Kansas City, Missouri, on May 30, 2000.

Marvin Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14482 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 3)]

Railroad Cost of Capital—1999

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On June 12, 2000 the Board served a decision to update its computation of the railroad industry's cost of capital for 1999. The composite after-tax cost of capital rate for 1999 is found to be 10.8%, based on a current cost of debt of 7.2%; a cost of common equity capital of 12.9%; a cost of preferred equity capital of 6.3%; and a capital structure mix comprised of 35.5% debt, 62.7% common equity, and 1.8% preferred equity. The cost of capital finding made in this proceeding will be used in a variety of Board proceedings.

EFFECTIVE DATE: This action is effective June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision shall be used for a variety of regulatory purposes. To obtain a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions., Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] The decision is also available on the Board's internet site at www.stb.dot.gov.

Environmental and Energy Considerations

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

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost of capital finding by the Board. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: June 6, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–14879 Filed 6–12–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. 42052]

Union Pacific Railroad Company—Petition for Declaratory Order—Imposed Interchange Charges

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Board is instituting a proceeding under 5 U.S.C. 554(e) to resolve questions concerning the right of a rail carrier to impose charges unilaterally against other carriers for events that may occur when cars are interchanged.

DATES: Comments by or on behalf of all interested parties are due July 12, 2000. Replies are due August 1, 2000.

ADDRESSES: The original and 10 copies of comments referring to STB Docket No. 42052 must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, ATTN: STB Docket No. 42052.

In addition, send one copy of comments to: (1) Union Pacific Railroad Company, Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, Nebraska 68179; (2) Iowa Interstate Railroad, Ltd., Edward J. Krug, Krug & Beckelman, P.L.C., 401 First Street S.E., Suite 330, P.O. Box 186, Cedar Rapids, IA 52406–0186; (3) City of Tacoma Public Utilities, d/b/a Tacoma Rail, Mark Bubenik, Chief Assistant City Attorney, P.O. Box 11007, Tacoma, WA 98411–0007; (4) Roger A. Serpe, General Counsel, Indiana Harbor Belt Railroad Company, 111 West Jackson Boulevard, Suite 1128, Chicago, Illinois 60604–3502; and (5) William C. Sippel, Thomas J. Litwiler, Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, Illinois 60601–6710.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On February 14, 2000, Union Pacific Railroad Company (UP or petitioner) filed a petition seeking a declaratory order to resolve a dispute over the right of a rail carrier to impose charges unilaterally against other carriers for events that may occur when cars are interchanged. Replies to the petition have been filed by respondents Indiana Harbor Belt Railroad Company (Indiana Harbor Belt), Iowa Interstate Railroad, Ltd. (Iowa Interstate), and City of Tacoma, Tacoma Public Utilities, d/b/a Tacoma Rail and Tacoma Beltline Railroad (Tacoma Beltline) (collectively, respondents).

Specifically, UP seeks a declaration that, under 49 U.S.C. 11121, a rail carrier may not unilaterally impose charges on another carrier for interchange of cars, either by ''tariff'' or otherwise, and that interchange-related charges imposed by one carrier on another must be either permitted by agreement of the carriers involved or specifically authorized by the Board. The controversy arises as a consequence of ''tariff'' provisions issued by respondents, pursuant to which charges may be imposed when cars are not pulled from interchange within

specified times. UP asserts that such interchange matters are subject to the Association of American Railroads' (AAR) Car Service and Car Hire Agreement (Car Hire Agreement), unless the rail carriers enter into agreements that differ from the Car Hire Agreement.

Respondents concur that a declaratory order is warranted, though they disagree with UP as to the substance of such an order. Indiana Harbor Belt assails UP's allegedly ''delinquent interchange practices in the Chicago Switching District.'' Iowa Interstate defends its charges as necessary to protect short line railroads against arbitrary and unfair interchange practices of Class I railroads. Tacoma Beltline asserts that UP's position constitutes anti-competitive conduct in complete disregard of business operations.[1] Iowa Interstate and Tacoma Beltline rely on the decision of the court in *Cincinnati, N.O. & T.P. Ry. Co.* v. *Chesapeake & O. Ry. Co.*, 441 F.2d 483 (4th Cir. 1971), for the proposition that AAR's car service rules do not prevent a carrier from acting individually through a ''tariff'' charge to avoid costs related to another railroad's malfeasance.

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), have exercised broad authority in handling such requests. In determining whether to entertain such petitions, the agency considers a number of factors, including the significance to the industry, the ripeness of the controversy, and whether a proceeding is necessary to terminate an active controversy.

The issues presented raise questions that would appear to have broad and current applicability within the railroad industry, involving significant interpretations of the statutory framework within which that industry operates since enactment of the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803. These significant questions deserve resolution on a full record, including the comments of all interested persons, not just the parties already of record.

Accordingly, a declaratory order proceeding is instituted to consider the issues raised in UP's petition and respondents' replies, based on the comments of all interested parties. This proceeding will be handled on the basis of written statements submitted by the parties.

Written comments (an original and 10 copies) by or on behalf of all interested parties (including petitioner and respondents) must be filed with the Board no later than July 12, 2000. Replies (an original and 10 copies) by petitioner and respondents must be filed no later than August 1, 2000.[2] Comments must state the basis for the party's position and must contain the name and address of the commenting party. Petitioner and respondents must be served concurrently with a copy of each comment (and reply); other commenters must be served concurrently with a copy of each reply.

Board decisions and notices are available on our website at ''www.stb.dot.gov''.

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

Decided: June 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–15000 Filed 6–12–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Tacoma Beltline requested that the Board delay any ruling until its lawsuit seeking interchange charges is resolved in *City of Tacoma, Tacoma Public Utilities* v. *Union Pacific Railroad Company*, Case No. C00–50548FDB, (W.D. Wash.) This request is moot, because in an order dated April 20, 2000, the court dismissed the case without prejudice, citing the Board's exclusive jurisdiction.

[2] Replies may also be submitted by other commenting parties, if desired, by the same date. Petitioner's and respondents' representatives are directed to assist in providing an appropriate mailing list to other interested parties, upon request.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 577X)]

CSX Transportation, Inc.—Abandonment Exemption—in Wayne County, IN

On May 22, 2000, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board, Washington, DC 20423, a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad known as its Richmond Subdivision, extending from railroad Milepost CI–61.90 to railroad Milepost CI–63.21 at the end of track, a distance of 1.31 miles, in Richmond, Wayne County, Indiana. The line traverses United States Postal Service ZIP Code 47374 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the labor protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pusuant to 49 U.S.C. 10502(b). A final decision will be issued by September 8, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 3, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 577X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before July 10, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired in available at 1–800–877–8339].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Dated: Decided: June 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–14878 Filed 6–12–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Monetary Fund Advisory Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 610 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the Secretary of the Treasury is required to establish an International Monetary Fund Advisory Committee (the ''Committee'') to advise the Secretary of IMF policy.

DATES: The fourth meeting of the Committee will be held on Friday, June 16, 2000, beginning at 1 p.m. in the Diplomatic Room located on the third floor of the main Department of the Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 444, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory. Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The IMF Advisory Committee will discuss the legislated mandates directed at the IMF, with a focus on questions related to good governance, combating corruption, and transparency.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. If you wish to attend please FAX your full name, birthday, and social security number to the Designated Federal Official no later than 4 p.m., June 12th, for clearance into the Treasury building. Members of the public who have provided such information, must enter the main Treasury building at the entrance on 15th Street between F and G Streets, and must provide a photo ID at the entrance to be admitted into the building.

Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Committee in advance of the third meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than June 7th.

Dated: May 16, 2000.

William J. McFadden,

Designated Federal Official.

[FR Doc. 00–14814 Filed 6–12–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 899]

The Gang Resistance Education and Training Program: Availability of Financial Assistance, Criteria and Application Procedures

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of availability of funds for financial assistance to State and local law enforcement agencies providing or desiring to provide the Gang Resistance Education and Training Program, intended funding priorities, and application procedures.

SUMMARY: Subject to the availability of appropriations, the Bureau of Alcohol, Tobacco and Firearms (ATF) intends to enter into cooperative agreements with State and local law enforcement agencies to assist them in providing the Gang Resistance Education and Training (G.R.E.A.T.) Program. This notice also sets forth the intended funding priorities and the criteria and application procedures that ATF will use to select and award State and local law enforcement agencies Federal funds to provide the G.R.E.A.T. Program.

DATES: Applications must be received on or before August 10, 2000.

ADDRESSES: Send applications to G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50418; Washington, DC 20091–0418; Attn: Notice No. 899.

FOR FURTHER INFORMATION CONTACT: James Scott, G.R.E.A.T. Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50418, Washington, DC 20091–0418 (1–800–726–7070); or by sending electronic mail (E-mail) to: Great@atfhq.atf.treas.gov, or visit the G.R.E.A.T. website at www.atf.treas.gov/great/great.htm.

SUPPLEMENTARY INFORMATION:

Background

G.R.E.A.T. is a gang prevention program designed to educate the youth about the dangers associated with joining street gangs and participating in violent crime. It functions as a cooperative program that utilizes the skills of ATF, Federal, State and local law enforcement personnel, as well as individuals from the community and civic groups. The G.R.E.A.T. Program trains police officers to provide instruction to grade and middle school aged children in gang prevention and anti-violence techniques. Training may be provided to any Federal, State, or local law enforcement agency, to the extent allocated funds allow. G.R.E.A.T. consists of three major components:

Component I: School-Based Education

Component II: After School/Summer Education/Booster Classes

Component III: Parent Involvement

Although the primary focus of the G.R.E.A.T. Program is Component I, applicants who are selected for financial assistance will be required to develop programs tailored to their respective communities for Components II and III.

Application Procedures

Application for financial assistance shall be made on ATF Form 6410.1 (Gang Resistance Education and Training Funding Application). Application forms may be obtained by contacting James Scott, G.R.E.A.T. Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50418, Washington, DC 20091–0418 (1–800–726–7070). E-mail address: Great@atfhq.atf.treas.gov or visit the G.R.E.A.T. website at www.atf.treas.gov/great/great.htm.

Funding Categories and Funding Distributions

In order to provide funding to a range of community sizes and locations, the applicants will be divided into five categories based on population. These categories will consist of populations: (A) 1,000,000 and over; (B) 500,000–999,999; (C) 100,000–499,999; (D) 25,000–99,999; (E) 24,999 or less. Each applicant will be required to report its population figures by using the Bureau of Census State Population Report for its entire service area. The population figures may be obtained from the Census

Bureau's website: www.census.gov/population/www/estimates or contacting the Census Bureau at 301–457–2422.

Criteria and Points

Each application will be evaluated and scored on the basis of the following criteria: (1) Juvenile crime statistics—(40%); (2) Percentage of middle school students proposed to be taught and have been taught—(25%); (3) Presence of curriculum reinforcement programs (Elementary, middle and high school life-skills programs, as well as summer, family and after school programs. Community partnerships will also be reviewed.)—(25%); (4) Support of National G.R.E.A.T. Program training—(10%).

Criterion 1. This criterion is designed to measure the magnitude of an applicant's youth crime problem. This criterion will utilize the Uniform Crime Reports (UCR) for the United States that are published annually by the Federal Bureau of Investigation (FBI). The total juvenile crime figures that will be used are the Part I and II offenses reported in the most recent UCR. The Part I and II offenses that are reported in the UCR are enumerated and defined in Appendix II of the UCR. In the event that an applicant does not provide annual data to the FBI for purposes of the UCR, the applicant should contact the G.R.E.A.T. Branch to determine how it can best submit information to measure its youth crime statistics. ATF will obtain the juvenile crime figures directly from the FBI. An applicant must indicate which service area (*i.e.,* city, county, *etc.*) ATF should use to obtain their juvenile crime figures. An applicant will receive a score based on its per capita juvenile crime figures, as computed using the most recent UCR.

Criterion 2. This criterion will measure middle school participation and consists of two sections, Section A and Section B.

Section A. An applicant will receive points based on the percentage of middle school students proposed to be taught G.R.E.A.T. compared to the total population of middle school students in the jurisdiction.

Section B. An applicant will receive points based on the percentage of middle school students that were taught G.R.E.A.T. in the last school year compared to last year's total population of middle school students.

Criterion 3. This criterion is used to identify applicants who currently have life skills programs in place that reinforce the effectiveness of the G.R.E.A.T. middle school core curriculum. Applicants will be asked to identify elementary, middle and high school programs that they have, as well as other summer, parent/family and after school programs. Applicants will need to include a narrative describing their programs and identify which life skills are being taught. This criterion will also identify applicants who have fostered community partnerships in order to enhance their local programs.

Criterion 4. This criterion will measure the applicant's commitment to their local G.R.E.A.T. Program and to the administration of the National G.R.E.A.T. Program. This criterion will consist of Sections A and B.

Section A. This section will compare the total officer staff-hours currently spent teaching the G.R.E.A.T. Program (to include classroom time, preparation, parent programs, and the summer component) in relation to the applicant's total full-time, officer staff.

Section B. This section will recognize applicants who regularly participate in G.R.E.A.T. sponsored committees, workshops, seminars, and/or have supplied National Training Team members for G.R.E.A.T. officer training.

Catalog of Federal Domestic Assistance (CFDA)

For the purpose of tracking Federal funds used in grants and cooperative agreements, the G.R.E.A.T. Program has been assigned the CFDA # 21.053.

Paperwork Reduction Act

The collection of information contained in this notice has been approved by the Office of Management and Budget (0MB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512–0548.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid 0MB control number.

Authority and Issuance

This notice is issued pursuant to Office of Management and Budget Circular No. A–102 (Grants and Cooperative Agreements with State and Local Governments).

Approved: May 31, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–14824 Filed 6–12–00; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Tuesday,
June 13, 2000

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 604
Birth and Adoption Unemployment Compensation; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB21

Birth and Adoption Unemployment Compensation

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department) is issuing this Final Rule to create an opportunity for State agencies that administer the Unemployment Compensation (UC) program to provide partial wage replacement, on a voluntary, experimental basis, to parents who take approved leave or who otherwise leave employment following the birth or placement for adoption of a child. This regulation permits interested States to experiment with methods for allowing the use of the UC program for this purpose.

EFFECTIVE DATE: This Final Rule is effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210. Telephone: (202) 219–5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219–8506; e-mail: ghildebrand@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

On December 3, 1999, we published for comment in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing to add new part 604 to 20 CFR. Part 604 will permit the State agencies that administer the UC program to provide partial wage replacement, on a voluntary, experimental basis, to parents who take approved leave or who otherwise leave employment following the birth or placement for adoption of a child.

The preamble in the NPRM contained a detailed explanation, by subpart, of each proposed section. Much of the material in the NPRM is repeated in this document to adequately respond to comments and to eliminate the need for readers to refer to the NPRM for context. Where substantive changes to the proposed rule are made, the changes are discussed in the relevant preamble section of this Final Rule. Technical revisions, however, are not discussed in this preamble. Unless otherwise mentioned, references in this preamble to changes are comparisons between the NPRM and Final Rule.

The NPRM was published with two appendices: Model State Legislation (Appendix A), which is optional draft legislation that States may use as a guide in developing legislation, and a Commentary (Appendix B) in question-and-answer format that provides information on the Model State Legislation and will aid States in making policy decisions. Comments received regarding these appendices are discussed in this preamble. The appendices are attached to this notice in the form of an Unemployment Insurance Program Letter (UIPL). The appendices will not appear in the CFR.

The NPRM invited the public to comment over a 45-day period. We believed this period was ample because of the simple nature of the experiment and the relatively short length of the proposed rule, although we did receive a number of requests for additional time. To accommodate the holiday season, we extended the comment period 15 days, through February 2, 2000. Comments were accepted by mail and electronic media. All comments submitted by this date, including correspondence received prior to publication of the proposed rule, were considered in developing this Final Rule.

B. Background

Based on findings from a 1996 study conducted by the Commission on Family and Medical Leave, which indicated that parents were not able to take needed leave because they could not afford it, and in response to the legislative efforts by some States to provide UC to parents, the President directed the Secretary of Labor on May 23, 1999, to propose regulations allowing unemployment fund moneys to be used to provide partial wage replacement to mothers and fathers on leave following the birth or adoption of a child. The President elaborated on this Birth and Adoption UC (BAA–UC) proposal in a May 24, 1999, memorandum to the heads of executive departments stating that ''the Department of Labor is to evaluate the effectiveness of using the system for these or related purposes.''

Through the BAA–UC experiment, States will be able to provide partial wage replacement to enable some parents, who otherwise would not have taken any leave, to do so. Others, who took leave but were compelled to return to work prematurely because they could not afford to be off work, may be able to take longer leave periods. We believe this increase in both the incidence and duration of leave-taking will benefit these parents and their children by allowing more time for parent-child bonding and for arranging stable child care. The BAA–UC experiment will test whether enabling these parents to have this time to be with their newborns and newly-adopted children by providing them with partial wage replacement will promote their long-term attachment to the workforce.

C. The Federal-State UC Program

The Federal-State UC program is administered as a partnership of the Federal government and the States. States collect State UC taxes used to pay compensation while the Federal government collects taxes, used for grants for State UC administration, under the Federal Unemployment Tax Act (FUTA). (The FUTA is codified at 26 U.S.C. 3301–3311.) The Department has broad oversight responsibility for the Federal-State UC program, including determining whether a State's law conforms and its practices substantially comply with the requirements of Federal UC law. If a State's law conforms and its practices substantially comply with the requirements of the FUTA, then the Secretary of Labor issues certifications enabling employers in the State to receive credit against the Federal unemployment tax, as provided under section 3302, FUTA. If a State and its law are certified under the FUTA, and the State's law conforms and its practices substantially comply with the requirements of Title III of the Social Security Act (SSA), then the State receives grants for the administration of its UC program. (Title III of the SSA is codified at 42 U.S.C. 501–504.) The Department enforces Federal UC law requirements through the FUTA credit and grant certification processes.

D. Ability To Work and Availability for Work

The Department has the authority and responsibility to interpret the provisions of Federal UC law such as the requirements that individuals must be ''able to work and available for work'' (known as the A&A requirements) to be eligible for UC. Although no explicit A&A requirements are stated in Federal law, the Department and its predecessors (the Social Security Board and the Federal Security Agency) interpreted Federal UC law as requiring participating States to have A&A requirements.

In response to practical economic and societal concerns, we have, on several prior occasions, exercised our authority to interpret Federal UC statutes regarding the A&A requirements to address several specific areas: approved training, illness, jury duty and temporary layoffs.

(1) Approved Training

Prior to incorporating the training provision into the Federal laws, we encouraged States to treat individuals in training approved by the State agency as meeting the A&A requirements since such training represents the most effective step available to the individual to return to work. We cautioned that State agencies should only approve short-term training that would make individuals job ready. In 1970, Congress, recognizing the importance of training in remedying unemployment, made this training provision mandatory for all States. (Section 3304(a)(8), FUTA.)

(2) Illness

Eleven States allow an individual who initially meets the A&A requirements, but then becomes ill, to receive UC payments without interruption, provided that no suitable work is offered and refused. We approve such State laws in an effort to deter disqualification for UC where a claimant was not able and available for perhaps one day, or even one hour, out of a week. Two States, Alaska and Massachusetts, cap the number of weeks ill claimants can collect UC at six weeks and three weeks, respectively; the other States have no statutory limitations. The Federal A&A requirements are preserved because claimants must initially demonstrate their ability to and availability for work before the illness and must be held ineligible if they refuse an offer of suitable work.

Similarly, under the Federal-State Extended Unemployment Compensation Act of 1970 (EB) (26 U.S.C. 3304, note), an ill individual may receive UC only if no suitable work is rejected. The EB program provides additional weeks of compensation to individuals who have exhausted their rights to regular compensation during times of high unemployment and contains a specific ''work search'' requirement. This work search requirement is suspended for EB claimants who are hospitalized for an emergency or life-threatening condition (20 CFR 615.8(g)(3)(i)(B)). This suspension is permitted only if the State law contains a similar provision to those explained above, which must be consistent with the Federal A&A requirements.

(3) Jury Duty

We accept that States may pay UC to individuals serving on jury duty consistent with the Federal availability requirement. This is reasonable because individuals are compelled under the threat of contempt of court by the judicial branch of the government to go on jury duty, and attendance at jury duty may be taken as evidence that the employee would otherwise be available for work. It would be inconsistent for the State to compel jury service and at the same time disqualify unemployed persons from UC for complying. Most employment is not considered an excuse for avoiding jury duty, and unemployment would also likely not be an excuse from jury duty. Indeed, EB claimants are exempt from the work search provision while on jury duty (20 CFR 615.8(g)(3)(i)(A)).

(4) Temporary Layoffs

In a temporary layoff, the employer is unable to provide work for a short period of time, but both the employer and the employee have the expectation that the employee will return to work on a specific date. When the employer recalls the employee, the employee must accept or be denied UC. In these cases, the availability requirement is essentially limited to the employer who laid off the employee. This recognizes that such employees are frequently career employees who would likely quit a new job to return to their former employer when the layoff ends; therefore, other employers would not likely hire such employees.

E. The BAA–UC Experiment

Under its authority to interpret Federal UC law and consistent with its broad oversight responsibility, we interpret the Federal A&A requirements to include this voluntary experiment for examining the use of the UC program to provide partial wage replacement to employees who take approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. This experiment will allow parents of newborns and newly-adopted children to strengthen their availability for work by providing them with the time and financial support to address several vital needs that accompany the introduction of a new child into the family. The experiment will test whether this opportunity for parents to provide the initial care that the child will need, to form a strong emotional bond with the child, and to establish a secure system of child care, will promote the parents' long-term attachment to the workforce.

II. Comment Overview

A. Pre-NPRM Publication Correspondence

Approximately 500 pieces of correspondence were received before the NPRM was published in the **Federal Register**. These comments came largely from employers, both for-profit and not-for-profit, and employer associations. We also received comments from members of Congress, State legislators, and private citizens.

The bulk of the pre-NPRM publication correspondence addressed compensation to individuals on leave under the Family and Medical Leave Act (FMLA) without regard to the differences between the FMLA and the Birth and Adoption UC (BAA–UC) experiment. Because the majority of the comments stated opinions regarding compensating employees on leave under the FMLA and because the correspondence preceded publication of the NPRM, we cannot discern specifically many writers' opinions concerning BAA–UC. (For example, concerns about the costs of wage replacement for employees on leave under the FMLA do not necessarily translate into concerns about the costs of BAA–UC which apply to a different, though partially overlapping, universe of potential recipients.) However, the specific issues (i.e., the reasons that support the opinions) noted in the pre-NPRM publication correspondence are included, as appropriate, with the post-NPRM publication comments.

B. Post-NPRM Publication Comments

Approximately 3,800 pieces of correspondence were submitted by the close of the comment period. Of those expressing an opinion, the post-NPRM publication correspondence indicated almost equal levels of support for and against BAA–UC. As with the pre-NPRM publication correspondence, the respondents included employers and employer associations, members of Congress, State legislators, State Employment Security Agencies (SESAs), and private citizens. As with the pre-NPRM publication correspondence, much of the post-NPRM correspondence solely addressed the FMLA without distinguishing the FMLA from the BAA–UC experiment. All the timely comments were considered and all correspondence is included in the rulemaking record.

We also received comments that were beyond the realm of both the BAA–UC regulation and the UC program (*e.g.,* prison reform, income tax reform, Federally-mandated vacations, availability of compensatory time in lieu

of overtime pay under the Fair Labor Standards Act, eligibility of BAA–UC recipients for employer-paid benefits). Because these comments exceed the parameters of the UC program and this regulation, they are not addressed herein.

We appreciate the time and attention that respondents gave to reviewing the NPRM. Although some respondents requested that we contact them individually about their comments, the large volume of comments prevented us from doing that and we believe this document adequately responds to their comments.

III. The Issues

A. General Overview

Generally, proponents of BAA–UC commented that BAA–UC is a logical extension of the UC program that would help new parents balance work and family responsibilities, would keep people off welfare, and could be easily and inexpensively administered. Many proponents referred to studies that discussed the positive effects on the workforce attachment of individuals who receive paid parental leave. Conversely, those opposing the rule urged that we withdraw the rule because the costs would be too great, child care and rearing are the personal responsibility of parents and beyond the scope of government, and the BAA–UC initiative runs counter to the intent of both the UC program and the FMLA. Some respondents consider the idea of partial wage replacement for new parents who are not working commendable, but they think that the UC program is the incorrect vehicle for such a benefit.

B. Misconceptions About the Rule

Analysis of the comments revealed two significant misconceptions regarding BAA–UC: (1) that BAA–UC is for leave under the FMLA, and (2) that BAA–UC is a new program, separate and apart from the regular UC program.

(1) Relationship Between BAA–UC and the FMLA

Many respondents referred to BAA–UC as ''paid FMLA'' leave or ''paid family leave.'' It was also apparent from the many comments expressing concerns about the potential for employee abuse, personal illness, and time away from work to care for family members, as well as the administrative burdens on employers in regard to the FMLA, that respondents viewed BAA–UC as tied to FMLA leave. The misconception that BAA–UC is for leave taken under the FMLA is understandable, as an impetus for BAA–UC was the finding in the 1996 study conducted by the Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* (April 30, 1996) (hereinafter called the ''FMLA study''), that new parents were not taking available unpaid leave because they could not afford it. Although there may be many cases where parents of newborns and newly-adopted children will be simultaneously eligible for BAA–UC and leave under the FMLA, the two are legally unrelated to each other. For example, the FMLA applies to employers with 50 or more employees and provides eligible employees with up to 12 weeks of unpaid, job-protected leave for their own or a family member's serious health condition, or to care for a newborn or newly-adopted child. The BAA–UC initiative, on the other hand, is voluntary on the part of the States, may not be made contingent on employer size, is limited to parents of newborns and newly-adopted children, does not guarantee leave, and has no job protection component.

(2) BAA–UC Is Not a ''New'' Program

Some respondents commented that BAA–UC is a new program, separate and apart from the regular UC program. Some comments included administrative questions regarding the relationship between ''the new benefit program'' and the UC program. Other respondents referred to BAA–UC as ''a new and disparate benefit unrelated to legitimate'' UC and stated that development of BAA–UC was beyond our authority. Concerns were also expressed that this ''entirely different benefit'' would artificially inflate the unemployment rates that trigger the extended benefit program. Based on the idea that BAA–UC is a separate program, many respondents contended that the unemployment funds that would be used to finance BAA–UC should be refunded to the employers.

BAA–UC is not a new program. Rather, it creates a new basis for eligibility under the ''regular'' UC program. BAA–UC is an experimental opportunity that is based on an expanded interpretation of the Federal requirements that UC recipients be able to work and available for work. As discussed, interpretation of Federal UC requirements is our responsibility and within our authority.

The comments regarding the NPRM fell into broad categories and are discussed, by category, in the following section.

C. The Comments

(1) Legal Authority For BAA–UC

(a) Presidential Directive

We received comments arguing that Congress should act on this proposal through legislation and that the President's directive to the Department to use the UC program to pay benefits in this manner is unconstitutional and violates the Administrative Procedure Act (APA). As the agency overseeing the Federal-State UC program, the Department has the authority to interpret the Federal UC laws, and we are exercising this authority through notice-and-comment rulemaking. The President's directive in no way limits the Secretary's discretion to consider comments in developing a final BAA–UC rule. Nor does this rulemaking usurp Congress's legislative authority; this rule represents the Department's interpretation of existing Federal UC law requirements.

(b) Federal Authority

We received comments regarding the Federal government's authority under the Federal UC laws to authorize the payment of BAA–UC. Several respondents suggested that no Federal A&A requirements exist and that States do not need a regulation to permit BAA–UC and can provide even broader coverage regarding eligibility beyond the payment of BAA–UC. Some respondents argued that Federal law sets a floor, but not a ceiling or cap, on UC coverage so that the States may pay benefits to whomever they wish (*e.g.*, even those on leave to care for a parent). Other respondents argued that the Federal UC laws necessarily prohibit the payment of BAA–UC and others suggested that the BAA–UC proposal is inconsistent with the Federal A&A requirements, as they have been interpreted in the past, as part of the Federal-State UC program.

The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced Federal A&A requirements since the inception of the Federal-State UC program. Several respondents noted that the A&A requirements are not clearly stated in the Federal UC statutes. Although no explicit A&A requirements are stated in Federal law, the Department and its predecessors interpreted four provisions of Federal UC law, contained in the Social Security Act (SSA) and Federal Unemployment Tax Act (FUTA), as requiring that UC claimants be able to and available for work. Two of these provisions, at section 3304(a)(4), FUTA,

and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a State's unemployment fund to the payment of ''compensation.'' Section 3306(h), FUTA, defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.'' The A&A requirements provide a test of an individual's ''unemployment.'' The other two provisions, found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation ''be paid through public employment offices.'' The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to an individual's ability to work and availability for work. These A&A requirements serve, in effect, to ''cap'' UC eligibility.

Some respondents noted that we could authorize the payment by States of BAA–UC simply by issuing a UIPL rather than issuing a regulation. Other respondents encouraged notice-and-comment rulemaking, rather than issuing a UIPL. Because permitting States to pay UC for birth and adoption represents a change in interpretation and in order to permit public input into the decision-making process, we engaged in notice-and-comment rulemaking.

In addition to interpreting Federal UC laws to include A&A requirements, we have previously interpreted the A&A requirements in some specific areas: approved training, temporary layoffs, illness, and jury duty. We received some comments suggesting that existing interpretations of the A&A requirements, such as those regarding approved training and temporary layoffs, are not comparable to the payment of BAA–UC because they are directed toward re-employment. However, the goal of the BAA–UC experiment is to test the proposition that providing UC to new parents can enhance and strengthen their attachment to the workforce through the provision of benefits during a time when they are faced with the added responsibilities of a newborn or newly-adopted child so that they will remain in the workforce.

While paying BAA–UC is a departure from past interpretations, it is a permissible departure which we see as a natural progression evolving from our prior interpretations. At the inception of the Federal-State UC program, the A&A requirements were narrowly interpreted, but the realities of working life have, over the years, led us to revise our interpretation. We have gone from a strict interpretation of the A&A requirements to a more flexible one. While the A&A requirements are a test of unemployment measuring an individual's attachment to the workforce, our interpretation recognizes that people can still be attached to the workforce even though there are situations and circumstances affecting their lives, like illness, jury duty, approved training, or temporary layoffs that affect their ability to meet the stricter interpretation of the A&A requirements.

Each of our four prior interpretations of the Federal A&A requirements recognize situations in which the classic definitions of A&A should not apply for reasons of practicality or economic reality. The illness interpretation recognizes that it is unreasonable to penalize an individual who has already established that s/he is available for work simply because s/he becomes ill for a short time. The jury duty interpretation recognizes that it is unreasonable to hold an individual unavailable for work when the State has compelled his or her attendance in court for jury service. Both of these interpretations derive from a flexible application of the A&A requirements because we want a practicable, sound, workable system. The purpose of UC is to provide partial wage replacement during temporary spells of unemployment. Terminating or denying UC to someone for serving on a jury or because the individual has a short illness undermines this purpose by leaving the individual without financial support for no good reason. It would deprive the individual of UC support without regard to the realities of working life, that is, that no one can be constantly available for work. The approved training interpretation recognizes the economic reality that, in some cases, making oneself unavailable for immediate work opportunities produces a greater benefit to an individual's ability to obtain good work and strengthens his or her attachment to the workforce. The temporary layoff interpretation recognizes the economic reality that when an individual already has a job to which s/he will return, it does not make sense to compel him or her to be able and available for other work. All of these interpretations recognize the reality that attachment to the workforce—the ultimate aim of the A&A requirements—can be demonstrated in other ways than by a continuous availability for any job. While none of these interpretations precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability.

Thus, in response to practical economic and societal concerns, we have revised our interpretation of the A&A requirements for the limited purposes of the BAA–UC experiment to include parents of newborns and newly-adopted children. States may wish to experiment by providing UC to these individuals to measure whether such payments will increase these individuals' attachment to the workforce.

We acknowledge that this is a reversal of our position taken in 1997, denying the State of Vermont's proposal to use UC in this manner to pay individuals on family and medical leave. The subsequent interest shown by several States, by various members of Congress, and by private organizations in using the UC program in this manner led us to analyze and re-evaluate our policy on this subject. While the interpretation that supports this rule is a change from the interpretation we expressed in our 1997 letter to Vermont, we believe that the change is supported by studies showing the benefits of providing cash benefits to those seeking to take parental leave. As demonstrated above, our new interpretation is part of an evolving interpretation of the Federal A&A requirements that recognizes practical and economic realities.

Several studies potentially relevant to BAA–UC were mentioned in the comments submitted by BAA–UC proponents. A few of these studies examined United States (U.S.) parental leave practices, while others studied European or other parental leave systems. A few studies examined paid leave, while others studied unpaid leave; at least three studies examined both, to some extent. The studies also examined differing time periods, controlled for different factors, and used differing statistical methodologies. Nonetheless, these studies collectively contained the following potentially relevant findings: (1) Family leave coverage increased the likelihood that a woman will return to her employer after childbirth in the U.S., Britain, and Japan (Waldfogel, Jane, et al. ''Family Leave Policies and Women's Retention After Childbirth: Evidence from the United States, Britain, and Japan.'' J. Popul. Econ. (1999) 12:523–545); (2) U.S. women with fully-paid leave worked later into their pregnancies than women with partially paid leave or women with no leave (O'Connell, Martin. ''Maternity

Leave Arrangements: 1961–85.'' Work and Family Patterns of American Women. U.S. Bureau of the Census, Current Population Reports, Special Studies Series P–23, No. 165. (March 1990), 17–20); (3) U.S. women with paid leave started back to work sooner than women with unpaid leave once their infants were at least two months old (Joesch, Jutta M. ''Paid Leave and Timing of Women's Employment Before and After Birth.'' J. Marriage & Fam. (November 1997). Vol. 59, No. 4, 1008–1022); (4) women, as opposed to men, account for almost all parental leave taken, and rights to paid leave were found to raise the percentage of women employed in nine European countries (Ruhm, Christopher J. ''The Economic Consequences of Parental Leave Mandates: Lessons From Europe.'' Q. J. Econ. (February 1998). Vol. CX 113, Issue 1, 285–317); (5) extending paid maternal leave programs was shown to raise rates of labor force participation for women in the prime child-bearing years in 17 industrialized countries (Winegarden, C.R. and Bracy, Paula M. ''Demographic Consequences of Maternal-Leave Programs in Industrial Countries: Evidence from Fixed-Effects Models.'' S. Econ. J. (April 1995). Vol. 61, No. 4, 1020–1035); and (6) U.S. women, who stayed at their existing jobs instead of quitting or changing jobs, were those with the longest maternity leaves and highest levels of ''workplace social support'' (Glass, Jennifer L. and Riley, Lisa. ''Family Responsive Policies and Employee Retention Following Childbirth.'' Social Forces (June 1998). 76(4):1401–35.).

As discussed below, while we do not find these studies definitive, they do appear to support the premise of the BAA–UC experiment, that BAA–UC will strengthen workforce attachment.

(2) Funding Issues

(a) Costs

A number of respondents viewed the proposal's costs as minimal, while others believed that the costs would be quite high. Comments also indicated that the use of abundant State unemployment funds for this purpose is beneficial and would have the long-term effect of keeping individuals off welfare. Many respondents mentioned that high State unemployment fund balances have allowed employers in a number of States to receive contribution rate reductions. Some of these respondents also believed that the costs of administration would be limited because systems for providing UC are already well established.

Some respondents raised general concerns regarding costs. Some also disagreed with our BAA–UC cost estimates. While some stated that our estimate was too high and costs would be minimal, others felt the estimate was too low, suggesting figures in excess of $36 billion per year. Some respondents presented alternative methodologies which did not account for some important factors that would significantly reduce the cost of BAA–UC.

For example, several respondents assumed that all States would provide 12 weeks of BAA–UC and that all leave-takers would take all 12 weeks. UC data collected by the Department as well as independent research suggest duration would be lower than 12 weeks. Our estimate combines data on distribution of leave duration from the FMLA study, with an assumed increase in duration, based on several independent UC duration studies, due to the availability of BAA–UC. This results is an estimated BAA–UC average duration of about 6 weeks (including any waiting week) for unpaid leave-takers.

Another cause for overestimation was the assumption of a 100% take-up rate for both States and individuals. Several respondents assumed all States would provide BAA–UC, and all parents would receive benefits. As explained below, we do not think all States will adopt BAA–UC. Also, not all new parents are employed or covered by UC, either because they are self-employed or they do not have a sufficient work history to be eligible. Of those who are eligible, some will receive some form of income support from their employers such as paid annual leave. These individuals either would not apply for BAA–UC or would receive BAA–UC for a shorter duration. Even among those who are not paid by their employer, not all leave-takers would apply for BAA–UC. Based on studies on UC take-up rates, about 65% of eligible workers actually applied for UC before phone claims were available. The introduction of phone claims is estimated to increase take-up rates by about 10 percentage points.

Several respondents provided alternative methodologies for estimating the cost of BAA–UC. For example, one respondent suggested starting with the overall employment-population ratio and adjusting it to the participation rates for women ages 16 to 44, assuming that the majority of women taking leave for a child under one year old would be under 44. This methodology gives a less precise estimate of the relevant employment-population ratio than the data we relied on from the Current Population Survey, published in the Bureau of Labor Statistics publication, ''Employment Characteristics of Families in 1998.'' This publication provides the employment-population ratio for mothers with a child under one year old (54%). This same respondent also pointed out that parents adopting children from foreign countries should be included in the estimate. These parents were excluded from the original estimate; however, based on the number of immigrant visas issued to orphans by the State Department, foreign adoptions represent only 0.4 percent of the number of women with children under one year old. (For the number of immigrant visas issued to orphans, see the State Department website at <http://travel.state.gov/orphan_numbers.*html*.>) Although the effect of foreign adoptions is small, we have now included these adoptions in our cost estimate.

Another respondent cited problems with using data from the FMLA study. Although we did use some of the percentages gathered in this study, the findings were adjusted for the differences between the FMLA and BAA–UC. On one hand, the BAA–UC proposal has a broader scope, in some respects, because those who work for companies with fewer than 50 employees will be able to receive BAA–UC while they would be ineligible for FMLA leave. Therefore, the percentages of men and women taking leave are found by weighting the average percentages of both FMLA-covered and non-covered leave-takers. On the other hand, BAA–UC is more limited than FMLA-covered leave because it covers only those taking leave to care for a newborn or newly-adopted child. The respondent was concerned that the FMLA study did not account for incentives and changes in leave-taking patterns since the FMLA was enacted, thus representing a ''premature look at the FMLA.'' The FMLA study provided some categorized data showing that, in fact, 98% of women needing leave for newborn care actually took some leave. There is, therefore, only a small margin for an increase in leave-taking by women because of incentives under either the FMLA or BAA–UC. Even so, we increased the percentage of women leave-takers by 1 percentage point to account for these potential incentives and increased the percentage of men by 5 percentage points, from 63% to 68%, for the same reason. According to the study, 91% of all women and men needing leave for birth or adoption took some leave; however, many felt compelled to cut short their leave

because they could not afford to be off work.

In the NPRM, we estimated that the BAA–UC costs would range from zero to approximately $68 million per year. This figure was based on the ''expressed interest'' of a small number of States as measured by whether BAA–UC legislation was introduced in a State. A respondent suggested that the four States specifically cited would not enact BAA–UC legislation; other respondents indicated more States would enact BAA–UC legislation.

Since the publication of the NPRM, a significant number of additional States have introduced BAA–UC legislation indicating that potentially more States than were included in our original estimate may enact BAA–UC. We do not know at this time which States will enact BAA–UC legislation; consequently, as described below, we revised the method of selecting States for inclusion in the cost estimate. This revised methodology and minor revisions in various estimating factors have changed the possible annual aggregate BAA–UC cost to an estimated range from zero to approximately $196 million.

In our revised methodology, we relied on past enactment of UC benefit expansions as an indicator of possible State participation in the BAA–UC experiment. We think this history of benefit expansions is a better indicator than introduced legislation because: (1) Additional States will likely introduce legislation in the future, and (2) it is extremely difficult to predict whether a particular State will actually enact legislation. Thus, to determine the number of States that may enact BAA–UC legislation, we grouped the States based on population as large, medium, and small. We then found the average number of States, by population group, that had enacted certain UC benefit expansions. Based on these findings, we estimated that 3 large states, 6 medium states and 4 small states may enact BAA–UC legislation. We then assigned to each State the average cost for its group. We assumed that States would gradually enact BAA–UC legislation over a 5-year period. We assumed that two States would enact BAA–UC legislation in the first year after the rule becomes effective, two more in the second year, and three more in each of the subsequent three years. The resulting year-by-year costs were then converted to their present value and averaged over the five-year period. The resulting average annual cost, $196 million, is the upper limit of our cost range. More detail on the cost calculation can be found in the Regulatory Impact Analysis which is part of the rulemaking record and available to the public.

Costs beyond the cost specific to BAA–UC were also discussed in the comments. For example, some respondents believe that the costs to government would be reduced because BAA–UC would increase individuals' workforce attachments and keep them off welfare. We expect to have more information in this area as a result of the BAA–UC experiment.

Other respondents, however, expressed concern about additional costs, citing lost productivity as a key problem of paying BAA–UC. However, the FMLA study found that most employers found no effect of the FMLA itself on productivity, and if they did report an effect, it was ''as likely to be positive as negative on business productivity and growth'' (p. xviii). Another study of nearly 300 employers in November 1993 also found that mandated leave policies can improve morale, public relations, and supervisory relationships, as well as decrease the level of absenteeism. (William M. Mercer et al. ''Survey Results: Family and Medical Leave Act'' (January 1994); see Final Rule for Family and Medical Leave Act, 60 FR 2237 (January 6, 1995).) Another concern was the loss of income taxes as a result of increased leave-taking. However, those receiving BAA–UC benefits would be required to pay taxes on their benefits. Therefore, although some individuals will pay income taxes on reduced income, some individuals who would have taken unpaid leave will pay more taxes than otherwise. Also, many employers use temporary employees to perform the duties of a person taking leave to care for a new baby. Thus, we believe there would be a minimal loss in income taxes collected.

(b) Experience Rating

Several respondents expressed concerns regarding the effect of BAA–UC on State experience rating systems and employer contribution rates. They argued that contribution rates will go up as a result of replacement employees being laid off; that charging employer accounts for BAA–UC payments conflicts with Section 3303(a)(1), FUTA; that noncharging will shift the costs from one group of employers to another; and that employers who reimburse States for payments of UC (*e.g.,* local governments and non-profit organizations, such as hospitals, school districts, and health care organizations) would have no relief from charges in some States. A respondent also suggested that contributing employers would be subsidizing reimbursing employers.

Concerning the statements that contribution rates will go up as a result of replacement employees being laid off, we believe that, because many employers already respond to leave-taking by using temporary employees or shifting the duties of current employees, the effect on contribution rates is likely to be small.

Regarding the comment that charging employers for BAA–UC would conflict with Section 3303(a)(1), FUTA, we see no cause for concern. Section 3303(a)(1), FUTA provides that ''no reduced rate'' of unemployment insurance taxes may be assigned except on the basis of an employer's ''experience with respect to unemployment or other factors bearing a direct relation to unemployment risk.'' The objections to charging employers for BAA–UC costs are apparently premised on the fact that the employer may exercise little or no control over an employee's taking of leave. While this may be true, it is well established that employers may be charged for situations where they did not create the unemployment; section 3303(a)(1), FUTA, permits a State to charge an employer so that the employer possibly pays a higher tax rate. For example, we do not require a State to ''noncharge'' (i.e., spread the costs among all employers) an employer when an employee quits for good cause not attributable to the employer; however, a State may choose to noncharge these costs.

Concerning the statements that noncharging employer accounts for BAA–UC costs would shift costs from one group of employers to other employers, effectively creating a situation where BAA–UC payments attributable to employers whose employees receive BAA–UC are being subsidized by employers whose employees may not receive BAA–UC, we note that this is not an issue specific to BAA–UC. States currently noncharge employers in specific situations, especially when the separation is beyond an employer's control. Just as States currently consider the effects of noncharging, we expect States to consider the effects of noncharging BAA–UC payments on the overall contribution system. Recognizing the arguments on both sides, we think that spreading BAA–UC costs among all employers is the most equitable means of financing this experiment. Consequently, our Model State Legislation provides for noncharging, and we encourage States to include such a provision in their legislation.

As with experience-rated employers, States may noncharge reimbursing employers. Specifically, in situations where the State determines that the UC paid is not attributable to service in the employ of the reimbursing employer, States may choose not to require reimbursement. As the commentary in Appendix B of the NPRM pointed out (64 FR 67979 (December 3, 1999)), reimbursing employers may be noncharged for BAA–UC payments just as the accounts of contributing employers may be noncharged. A respondent suggested that we make noncharging options for reimbursable employers more clear; however, the BAA–UC regulation makes no changes to the experience rating or reimbursement requirements and we see no reason to single out this one facet of the UC program for elaboration. For more information regarding the noncharging of reimbursable employers, interested individuals are referred to UIPL No. 21–80 and UIPL No. 44–93 (58 FR 52790, 52792 (April 12, 1993)).

(c) Other Funding Methods

Some respondents suggested that benefits like BAA-UC could be funded in ways other than the current method of financing benefits through employer contributions to State UC programs. Suggested funding methods for BAA–UC included using Federal unemployment tax revenues, using Social Security funds, allowing tax-free withdrawals from retirement plans, and creating Federal loan programs similar to student loans. Suggestions for State funding included the introduction of an employee-paid tax, such as currently exists for temporary disability insurance in some States. There was also a suggestion that individuals obtain private insurance.

Federal law governs how Federal unemployment tax revenues may be used. Nothing in Federal law authorizes the Department to use these revenues for purposes such as the BAA–UC experiment. The other suggested Federal funding mechanisms are beyond the Department's jurisdiction. As for the suggested State funding mechanisms, States are (and always have been) free to develop means outside the UC program to provide income support for new parents who are not working. Also, if a State elects to use a funding source outside the UC program, the State's program would not be subject to the requirements of the BAA–UC regulation.

(d) Potential Loss of Administrative Funding and Employer Tax Credits

We also received some comments expressing concern about the loss of Federal unemployment tax credits and UC administrative funding if, after a State enacts BAA–UC, a Federal court were to strike down our regulation authorizing it. We are the only agency authorized to institute conformity and compliance proceedings against States which could result in the loss of these tax credits to employers. We will not withhold certification for administrative funding and employer credits for States participating in an effort that we have sanctioned. While we do not believe a court would strike down this rule, prior to any conformity and compliance proceeding, we would follow the normal procedures outlined in 20 CFR 601.5(b) to permit the State a reasonable time to change its laws in order to come into compliance.

(e) Unemployment Fund Solvency

Some respondents expressed concern that BAA–UC would jeopardize the financial solvency of the UC program, in particular the program's ability to handle future recessions. Others thought we should require States that enact BAA–UC to meet and maintain an unemployment fund solvency requirement of a 1.00 average high cost multiple (AHCM) or another measure that reflects a reasonable index of fund solvency. Some respondents recalled that we have expressed concern over many States' insufficient unemployment fund balances and pointed out that the Federal Government has had to ''rescue'' State unemployment funds in the past.

We have never interpreted Federal law to require ''solvency.'' While we will continue to encourage all States to meet and maintain an AHCM of 1.00, we do not think we should tie BAA–UC specifically to fund solvency. A State in a weak solvency position should not conduct a BAA–UC experiment without also creating a means of financing it. Just as States currently assess the costs to their unemployment funds whenever coverage, benefit expansions, or tax changes are considered, we expect States to consider the costs of BAA–UC before enactment. We will provide technical assistance to States needing assistance in determining their solvency positions and, if requested, will work with States to determine financing options.

(3) Fundamental Program Changes

(a) The FMLA Program

As stated above, we received many comments that relate the BAA–UC proposal to the FMLA. The respondents see the payment of BAA–UC as an attempt to require paid leave under the FMLA, which contains no such requirement. They contended that this proposal violates and/or amends the FMLA by converting unpaid leave under the FMLA into paid leave under the Federal-State UC program and runs counter to the notion that the FMLA would never require paid leave. Other respondents questioned whether BAA–UC requires the employer to hold the job for a BAA–UC claimant.

The FMLA is a distinct and entirely different statute from the SSA and FUTA which established the Federal-State UC program. The FMLA guarantees certain eligible employees unpaid, job-protected leave for up to 12 weeks for their own or a family member's serious health condition, or to care for a newborn or newly-adopted child. While the FMLA in no way mandates paid leave, it does not prohibit employers from providing paid leave to employees exercising their right to leave under the FMLA. Furthermore, the FMLA provides that nothing in it should be construed to supersede State or local laws that offer benefits greater than those contained in the FMLA. Consequently, neither the BAA–UC regulation nor the implementation of BAA–UC in the States would violate the FMLA. This regulation does not impose paid leave or address employment rights. Rather, it permits the States, through the UC program, to pay partial wage replacement to employees who choose to take time off for the very narrow purpose of being with a new child. The provision of BAA–UC is voluntary for States, and this regulation does not amend or change the FMLA. Thus, while nothing in BAA–UC changes the basic understanding that the FMLA does not require paid leave, States are free to enact BAA–UC as part of an effort to provide benefits greater than those contained in the FMLA. Indeed, we are not interpreting the FMLA, but the Federal UC laws.

(b) The UC program

Based on the premise that Federal UC law requires recipients to be involuntarily unemployed and actively seeking work, many respondents view BAA–UC as a fundamental change to the UC program. We received many comments suggesting that the group covered under this experiment constitutes persons not entitled to UC because they presumably would be voluntarily leaving their employment to be with their newborns or newly-adopted children. However, we have never interpreted Federal UC law to require that an individual's separation from employment be ''involuntary'' as a condition of entitlement to benefits.

Indeed, in those situations where a job relocation forces a spouse to quit his/her job to follow the other, some States allow the payment of UC without disqualification.

We also received many comments alleging that the group of employees covered by the proposed regulations are not truly ''unemployed'' as that term has been understood in common usage. The comments focused on the fact that these new parents would not, for the most part, be laid off by their employers but would be leaving a job the employer would continue to allow them to have. These comments appear to assume that there is a requirement in the UC program that in order to be considered unemployed, the employment relationship must be severed. This is not the case as illustrated by the payment of UC to individuals on recall. Whether an individual is unemployed within the meaning of Federal law depends on whether the individual has experienced an actual reduction in hours worked. (See UIPL 08–98, 63 FR 6774, 6776 (February 10, 1998)). (Most States define ''unemployment'' as a reduction in hours worked. See also 20 CFR 625.2(w)(1).) Persons receiving BAA–UC would come under this definition since they would have suffered a loss of work. Moreover, an individual need not completely sever his or her connection to his or her employment to qualify for UC as Federal law also permits payments to individuals for partial unemployment.

We also received comments expressing concern that the regulation does not require BAA–UC recipients to demonstrate, prior to the end of the leave period, that they intend to go back to work. There was a similar concern that individuals who otherwise leave employment, but do not intend to return to the workforce, will receive BAA–UC. Still other respondents were concerned that BAA–UC recipients are not required to actively seek work and that the regulation will eliminate the ''refusal of suitable work'' disqualification. Respondents also noted that BAA–UC would conflict with existing eligibility requirements under State UC laws.

The BAA–UC regulation defines ''approved leave'' as ''a specific period of time, agreed to by both the employee and employer or as required by law or employment contract (including collective bargaining agreements), during which an employee is temporarily separated from employment and after which the employee will return to work for that employer.'' Therefore, by definition, BAA–UC recipients on approved leave from their employers have demonstrated their intent to return to work by agreement or by contract. States may establish BAA–UC overpayments if individuals on approved leave choose not to return to work. As for individuals who otherwise leave employment, the BAA–UC experiment will also test whether their workforce attachment is strengthened.

As for work search requirements and the ''refusal of suitable work'' disqualification, these are not generally applicable Federal UC requirements but are permissible restrictions contained in various State UC laws. Except for the extended benefits program, there is no Federal requirement that States ensure that UC recipients be actively seeking work. While the BAA–UC experiment neither specifically mandates nor eliminates these State-imposed requirements, States would need to amend their State UC laws with regard to these requirements to the extent they interfere with the payment of BAA–UC should they wish to implement BAA–UC.

(4) Scope

Several respondents stated that BAA–UC should be extended to all adults who fulfill parental responsibilities, such as foster parents, step-parents, domestic partners, or any individual who stands in loco parentis to a child. Still others think that experimental BAA–UC should be expanded to other types of medical and family leave, such as leave during pregnancy, for personal illness, and to care for ill family members. There was also a suggestion that we clarify that States may provide ''supplemental'' BAA–UC.

No decisions regarding expanding the potential universe of recipients will be made until we have evaluated BAA–UC. Because BAA–UC is an experimental effort, there must be limitations, as with any experiment. Consequently, we have limited BAA–UC to the parents of newborns and newly-adopted children. This small, easily-defined group can be used to test whether compensating absences from employment will assist individuals to maintain, or even improve upon, their connection to the workforce. Changing the definition of parents to include all parents as defined under the FMLA or to extend UC to all FMLA leave will not enhance the experiment.

As for ''supplemental BAA–UC,'' States currently have the authority to provide supplemental (commonly known as additional) UC. For example, some States provide supplemental UC to ''displaced'' workers or to workers in State-approved training. BAA–UC is no different. While the regulation does not prohibit supplemental BAA–UC, we had not contemplated its provision when developing the experiment.

(5) Eligibility

A number of respondents noted with approval that the States would have the opportunity to determine eligibility criteria (work history requirements) and benefit amounts and durations, as is currently done. Others indicated that the BAA–UC regulations should be more prescriptive in terms of eligibility and benefits for BAA–UC. A few respondents felt the UC program would discriminate against the poorest workers by tying benefit levels to past wages. Others said that BAA–UC claimants should receive the same benefit levels as regular UC claimants.

(a) Breadth of Eligibility

We received comments characterizing the potential eligible population as overly broad. The stated concerns included:

- No limitations on the number of times parents may claim BAA–UC, allowing parents to take extensive periods of leave multiple times (for example, BAA–UC eligibility is not restricted to a specific number of births or adoptions);
- No limitation on the number of parents per child who may make a claim for BAA–UC, thereby allowing both the biological and adoptive parents of a child to claim benefits;
- No requirement that the child actually live with the parents or be cared for by the parents; and
- Silence in the regulations regarding continuing eligibility in cases where an adoptive parent ceases to be the parent or in cases where the child dies.

States have broad latitude regarding UC eligibility requirements. Consequently, we designed the regulation in a manner, consistent with the general structure of the UC program, that is not overly prescriptive. By so doing, the States have the flexibility necessary to best meet the needs of their respective populations. States are free to consider these kinds of issues in developing eligibility rules for their BAA–UC experiments.

Although State flexibility and innovation are key elements of BAA–UC, all Federal UC law requirements must be maintained, such as making payments when due (which also means not making payments that are not due) as required by section 303(a)(1), SSA, and not introducing eligibility factors unrelated to the fact or cause of an individual's unemployment. For example, restricting BAA–UC eligibility based on the number of births or

adoptions for which an individual has previously received BAA–UC is unrelated to the fact or cause of the individual's unemployment, and, therefore, would be inconsistent with Federal law.

(b) Length of Eligibility Period

One respondent felt that the availability of BAA–UC any time within the year following the birth or placement for adoption of a child was longer than needed for parent/child bonding. Several respondents advocated a period of at least one year because they believed it would encourage breast-feeding for the health and well-being of the child, while shorter periods may encourage premature weaning. Another respondent stated that, as long as benefits began within the first year, States should be allowed to extend the eligibility period beyond the first year. Some respondents advocated that BAA–UC be provided intermittently throughout the eligibility period, in some cases in time frames as short as one-half hour.

Research suggests that parental leave is beneficial for early childhood development. In terms of the eligibility period, we selected one year as the eligibility period because it correlates the needs related to introducing a new child into a family with the current benefit year under the UC program: States could establish a shorter eligibility period. Our Model State Legislation provides for a 12-week benefit period within a one-year eligibility period, and we encourage States to include such a provision in their legislation.

The BAA–UC regulation does not require that BAA–UC be paid only for consecutive weeks; therefore, as part of the regular UC program, BAA–UC may be provided intermittently throughout the benefit year. Partial BAA–UC may also be claimed for weeks in which an individual is partially unemployed; however, BAA–UC may be reduced under State law by wages earned during a week of partial unemployment. Typically, wages earned during one-half week or more exceed the available UC; therefore, very short time frames of unemployment (such as one hour per day) would not be compensable.

(c) Employer-Provided Benefits

Some respondents expressed the opinions that employers should be able to require employees to take employer-paid leave before being eligible for BAA–UC, and that employers who provide paid leave or disability coverage should be excepted from BAA–UC coverage. Other respondents suggested that employers who currently provide paid leave will reduce or eliminate those benefits to avoid paying twice.

BAA–UC is part of the UC program and applies to all employers covered by State UC law. Therefore, just as there is no basis for excepting employers who provide private unemployment insurance to their employees, there is no basis for excepting employers from BAA–UC based on employer-provided benefits. As stated earlier, the introduction of factors unrelated to the fact or cause of an individual's unemployment would be inconsistent with Federal law. Consequently, even though employers may require employees to take employer-paid leave before taking unpaid leave under the FMLA, States may not make BAA–UC eligibility contingent upon the exhaustion of employer-paid leave. States may, however, reduce BAA–UC by the amounts of the employer-paid benefits and wages. Generally, States and employers could have lower costs if employers continue to provide benefits. Our Model State Legislation provides for employer-provided wages and benefits to be deducted from BAA–UC, and we encourage States to include such a provision in their legislation.

(d) BAA–UC Exhaustions

A few respondents requested clarification as to what happens after BAA–UC is exhausted. These respondents questioned whether States could pay UC where conventional A&A requirements apply upon exhaustion and whether States could demand repayment of BAA–UC if an individual failed to return to work.

BAA–UC is a part of the States' regular UC programs. States are, therefore, free to determine BAA–UC's relationship to UC where the conventional A&A requirements apply. Thus, a State could pay an individual conventional UC after BAA–UC is exhausted if the individual meets all conventional UC eligibility requirements. Whether BAA–UC counts toward the maximum number of weeks of conventional UC in this case is also a State decision. Our Model State Legislation provides for counting BAA–UC weeks toward the maximum UC entitlement, and we encourage States to include such a provision in their legislation.

Concerning overpayments, the questions and answers that accompanied the NPRM indicated that a State may declare an overpayment of BAA–UC when the individual did not return to work after receiving BAA–UC. We note, however, that there may be cases where the individual is unable to return to work. For example, the employer may have had a general layoff. In cases such as this, a more equitable approach is to determine whether the individual meets all other State UC requirements, including actively seeking work. For these and operational reasons, our Model State Legislation does not provide for recoupment of overpayments.

(6) Experimental Nature of BAA–UC

(a) Experiment Versus Non-Experiment

We received numerous comments concerning the experimental nature of BAA–UC. Some respondents argued that we do not have the authority to conduct an experiment. Some respondents stated that there was no need to experiment because other studies have already proven the benefits of compensated parental leave. Noting that the Department did not require a period of experimentation in other areas, such as allowing payment of UC to individuals in approved training programs or to ill individuals, some respondents asked why experimentation was necessary for BAA–UC. A respondent suggested that if we intended to conduct a test we should fully fund a pilot involving a few States.

Other respondents questioned whether BAA–UC really is an experiment. Among the comments were claims that it would be difficult and politically unpopular to stop once started, and that the purpose of the experiment (that is to test whether the provision of BAA–UC would promote a continued connection to the workforce) ''is an unmeasurable, wholly subjective concept.'' Other respondents suggested that BAA–UC was not truly experimental because the proposed regulation did not include specific measures and lacked definitive beginning and ending periods. Still other respondents saw BAA–UC as the first phase of an inevitable, continued expansion of the UC program.

Some respondents approved of our approach. They likened the BAA–UC experiment to the UC program design and quoted President Franklin Roosevelt in his message to Congress encouraging enactment of the SSA: ''[T]he Federal act should require high administrative standards, but should leave wide latitude to the States in other respects, as we deem varied experience necessary within particular provisions in unemployment compensations laws in order to conclude what types are most practicable in the country.'' 79 Cong. Rec. 546 (1935).

BAA–UC is indeed an experiment. We have the authority to interpret Federal

UC law, and we chose an experimental approach to test whether BAA–UC promotes parents' continued connection to the workforce. Thus, through voluntary State participation, the BAA–UC experiment will allow us to gather the necessary facts on whether a positive correlation exists between the provision of UC to parents of newborns and newly-adopted children and a demonstrated connection to the workforce by these parents. The fact-finding in this experiment is critical in assisting us to fulfill our authority and responsibility to assure that the States' UC programs conform to Federal UC law.

As stated in the NPRM, this experiment recognizes the impact of women in the workforce and responds to the societal and economic changes resulting from the large number of families where both parents work. We intend to gather information and evaluate the impact of the provision of partial wage replacement on employees, employers, and States' unemployment funds. We have chosen to adopt an experimental approach because the introduction of BAA–UC represents a significant shift in our view of the Federal UC requirements. We think the impact on not only employees, but also on employers and State unemployment funds should be studied. Consequently, rather than developing a pilot that might be less flexible, we chose an experimental approach that is designed to promote State innovation.

Several respondents suggested that the U.S. lags behind other developed countries in providing paid family and medical leave and pointed to studies that discussed the positive effects of paid leave in other countries. However, the benefits programs of other countries are dissimilar to the UC program in the U.S. Other respondents pointed to existing studies in this country that indicated positive effects on workforce attachment from paid parental leave. While these studies support our initiative, we believe it advisable to independently study the effects of partial wage replacement for parents of newborns and newly-adopted children on the States' UC programs, since no study was specific to the UC program. Therefore, we see experimentation with BAA–UC as a logical step.

Statistics reported for the regular UC program will include all data related to BAA–UC. Additional administrative data will be collected, using an existing data collection mechanism, from participating States as soon as they implement experimental BAA–UC. Several respondents proposed specific elements that should be evaluated. While the specifics have yet to be determined, we anticipate that the administrative data will include, among other items, initial claims, weeks claimed, weeks compensated, and benefits paid. As States gain experience with BAA–UC, we will evaluate the effect of BAA–UC on each implementing State's UC program as part of an ongoing evaluation.

Some respondents criticized the regulations for not placing any formal sunset or termination provisions or time frame for the study. Because of the flexible nature of the BAA–UC regulations and the potentially different enactment dates, we have set a target that would trigger a comprehensive evaluation of BAA–UC when at least four States have implemented legislation and operated BAA–UC for a minimum of three years, as noted in section I. B. (4) of the preamble to the NPRM (64 FR 67974).

We believe an evaluation based on this target will provide reliable information that takes into account the variations among the States' BAA–UC experiments and allows us to ascertain the impact of BAA–UC on States' unemployment funds, employees, and employers' contribution rates, in addition to determining the workforce connections of BAA–UC recipients. While all these factors are important, we note that many respondents were interested in the impact of BAA–UC on State unemployment funds. Therefore, even though we are not establishing a solvency requirement, we will thoroughly evaluate how States determined their solvency positions and the impact of BAA–UC on State unemployment funds.

BAA–UC legislation introduced in States prior to the issuance of the NPRM varied substantially—an early indication that BAA–UC experiments among the States could differ greatly. In addition, regardless of whether States enact vastly different BAA–UC legislation or enact similar legislation, demographics, take-up rates, benefit levels, and benefit charging methodologies could vary substantially among the States. A comprehensive evaluation, therefore, will be conducted when at least four States have operated BAA–UC for at least three years. We are committed to completing a comprehensive evaluation, and this evaluation will serve to determine whether to make BAA–UC permanent, to expand it, or to end it entirely. If four States do not enact BAA–UC legislation, we will then consider how best to comprehensively evaluate the experiment given the limited data.

(b) Impact of Experimental BAA–UC on Employees, Employers, and Families

Employees. Numerous respondents commented on the potential negative impact of BAA–UC on employees. Some speculated that, because of costs associated with BAA–UC, employers would be discouraged from providing employer-paid benefits to employees or from hiring individuals of childbearing age. Others asked about the effects of BAA–UC on an individual's eligibility for various employer-paid benefits and on Federally-mandated benefits, such as private health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Health Insurance Portability and Accountability Act of 1996. Others expressed concern that employers would move jobs out of the country, causing employees to lose jobs. Some, noting that the work of absentee employees would likely be spread among co-workers, predicted ''negative effect[s] on co-workers and their families.'' Among claims that BAA–UC discriminates against employees who do not meet the eligibility requirements, there was speculation that implementation of BAA–UC would pit childless employees against employees with children in addition to pitting employees unemployed as a result of economic downturns against BAA–UC recipients vying for benefits from diminishing unemployment funds.

There were also numerous comments focusing on the positive impact of BAA–UC on employees. Respondents suggested that providing BAA–UC would decrease worker anxiety and reduce employee turnover, resulting in greater productivity.

Employers. As with employees, we received many comments about the impact of BAA–UC on employers. Many speculated that employer costs and administrative burdens would be excessive, that litigation would increase, and that worker shortages would be exacerbated because employees would be more able to take off work. Some employers worried that their global competitiveness would suffer, and some small employers were concerned that they would be subsidizing leave taken by employees of FMLA-covered businesses. Many employers urged a tax cut for businesses instead of expanding UC. A few respondents suggested that, as increased employer State UC taxes are passed on, employees and consumers will suffer. Others suggested that employer costs would be minimal and employers would benefit from a more stable workforce resulting in lower employee turnover and greater

productivity. Respondents also referred to studies that indicate that women who have paid maternity benefits take less time from work and are less likely to quit their jobs than women with access to unpaid leave or women who have no leave available. Others suggested different ways of reporting FMLA leave on UC forms as an alternative to providing BAA–UC.

Families. There seems to be general agreement in the comments that families would benefit from parents and children having the opportunity to bond. Many respondents commented that quality day care is expensive and scarce. However, as noted above, some respondents think that there will be a negative impact on the families of the co-workers of BAA–UC recipients due to increased workloads and overtime required to cover for persons on leave. There were also comments that BAA–UC would be bad for families because it would encourage both spouses to work and promote parental attachment to the workforce instead of the family. Some respondents criticized us for encouraging population growth, and others stated that income tax cuts or child tax credits would be more beneficial than BAA–UC in helping families with children.

Although the effects of BAA–UC on employers, employees, and families have not yet been documented, these effects concern us, and we expect that States will consider potential effects prior to enacting BAA–UC. As part of our study of the BAA–UC experiment, we will compile the necessary information needed to evaluate the effects of BAA–UC on employees and employers.

As stated in the NPRM, we believe that providing BAA–UC will have a positive impact on families because it will allow more parents to take leave to be with their newborns or newly-adopted children. Although studies suggest a positive impact on the workforce from compensated maternity and family leave, this is the first test of the effects on employers and employees of using the UC program to provide partial wage replacement for parents following the birth or adoption of a child. Because our cost estimates for the BAA–UC experiment are relatively low as a percentage of overall UC costs, we do not believe that BAA–UC will move jobs out of the country, impair U.S. global competitiveness, or otherwise adversely affect employers. For that same reason, we do not believe that litigation or employer administrative burdens would significantly increase.

Regarding size-of-employer concerns, BAA–UC applies to employees of both small and large employers. Small employers not subject to the FMLA may well approve leave without the compulsion of the FMLA. Also, States are free to offer BAA–UC to individuals who otherwise leave their employment as a result of being ineligible for leave under the FMLA. The effect that the receipt of BAA–UC might have on either employer-paid benefits or non-UC Federally-mandated benefits would be determined by those programs and/or applicable statutes. But these effects are among the things we will review when evaluating the BAA–UC experiment. Finally, we have no data to suggest that providing partial wage replacement promotes higher birth rates, discriminates against individuals of childbearing age, or creates worker shortages; and, as we noted earlier, other options to help families, such as tax cuts or credits, are outside our purview.

(7) Voluntary Effort

Some respondents referred to BAA–UC as a mandate by the Administration. There were also some comments maintaining that the experiment is not really voluntary in that all States will be impacted because of interstate and combined-wage claims. (In an interstate claim, the individual has worked in one State, but files a claim in another. In a combined-wage claim, an individual has worked in more than one State and combines the work into one State for purposes of qualifying for UC or for receiving higher benefit amounts or longer duration. (See 20 CFR Part 616.)) Noting that each State participating in the Interstate Arrangement for Combining Employment and Wages must act as an agent for other participating States, one respondent held that it would be ''impossible for one [S]tate to have an experimental program without impacting other [S]tates.''

BAA–UC is a State option, not a mandate. States currently have wide latitude in determining most eligibility criteria. Indeed, with a few exceptions, States determine most aspects of their UC programs, such as earnings requirements, ''good cause'' for voluntary quit occurrences, disqualifications, benefits amounts and durations, and continuing eligibility requirements. In this regard, there are substantial variations among the State UC programs. As a result, there are situations where benefits are paid in one State that would not be paid in another, and this is reflected in combined-wage claims. We agree that, just as there now is some financial impact on States resulting from combined-wage claims, there will be some impact on non-BAA–UC States resulting from combined-wage claims which are also BAA–UC claims. That impact is the result of State participation in the Federal-State UC program.

(8) Administration

Some respondents, particularly SESAs, submitted a broad range of administrative questions. The scope of the questions included how to count BAA–UC claims on Federal reporting forms, required documentation for eligibility determinations, and confidentiality of information.

We will issue specific reporting and other administrative guidance on these issues and others to SESAs in a directive separate from this rule. States will be required to report specific BAA–UC claims data. When States implement BAA–UC, statistics reported for the regular UC program will include all data related to BAA–UC. To identify only BAA–UC activity, we will use the ''Quick Response Report'' (the report used when collections involve fewer than 10 States, assuming that fewer than 10 States implement BAA–UC) under the standard reporting requirement authority in section 303(a)(6), SSA. This report provides for the collection of up to 12 items of information. It is anticipated that data collected will include, among other items, initial claims, weeks claimed, weeks compensated, and benefits paid. If 10 or more States enact BAA–UC, reporting requirements will be issued in a separate information collection request in accordance with the Paperwork Reduction Act.

Concerning administrative methods, States are required under section 303(a)(1), SSA, to have ''methods of administration * * * reasonably calculated to insure the full payment of unemployment compensation when due.'' For BAA–UC, this means that, as is the case for all types of UC, States must have reasonable administrative methods to assure that an individual is eligible. States are expected to obtain the requisite documentation, for example, that an individual is on approved leave or has left his or her employment, that the individual has a newborn child under one year old, or that a child has been placed for adoption. States must have reasonable methods to assure that the individual is eligible for each week claimed and methods for detecting and collecting overpayments. Each State already has all of these methods in place for the regular UC program; States need only modify them as appropriate to accommodate BAA–UC requirements. If

we identify a need for further guidance on any ''methods of administration,'' we will issue guidance as appropriate. Concerning confidentiality of information, States must treat BAA–UC claims information in the same manner as claims information for the regular UC program. Guidance on confidentiality is found in UIPL No. 34–97 (62 FR 40118, 40119 (July 25, 1999)).

(9) Inconsistency With Welfare to Work (WtW) and Workforce Investment Act (WIA) Initiatives

Some respondents contended that experimental BAA–UC is inconsistent with the WtW and WIA initiatives. As they pointed out, these programs are designed to help and encourage individuals to join the workforce. Comparing BAA–UC to the pre-1996 welfare program, one respondent asserted that BAA–UC was counter to the WtW and WIA initiatives in that it would ''create a disincentive for individuals to access WIA training and child care programs, and encourage them not to enter or stay in the workforce.'' Respondents also were concerned that BAA–UC would discourage personal responsibility.

We view BAA–UC and the WtW and WIA initiatives as compatible efforts. Just as the WtW and WIA initiatives help individuals enter into the workforce, BAA–UC may help them maintain a connection to the workforce. As with all UC recipients, experimental BAA–UC recipients must have a sufficient work history, as determined by each State, to be eligible for benefits. Consequently, implementation of BAA–UC provides no inducement to avoid entering into the workforce. Indeed, the whole premise of BAA–UC is that individuals who receive these benefits will be more attached to the workforce. Because, as with all UC programs, experimental BAA–UC will provide only short-term, partial wage replacement, we see no disincentive to individuals to remain in the workforce.

(10) Fraud and Abuse

Some respondents expressed concern about the potential for fraud and abuse, noting that the regulation does not condition receipt of BAA–UC on any evidence of parent-child bonding efforts, on the parent(s) and child sharing a residence, or on whether the parent(s) support and/or actually spend time with the child. Some respondents surmised that BAA–UC would be ''a paid vacation plan.''

The purpose of the regulation is to test whether compensating absences from employment will help parents of newborns or newly-adopted children maintain or improve their connection to the workplace; it is not designed to test whether the parents and children actually bond. We do not presume that any specific parental activity or circumstance is more (or less) appropriate for promoting bonding between parents and children. The regulation, therefore, does not impose upon States the burden of verifying specific bonding activities. As is the current practice, methods of fraud detection and overpayment collection will be developed as deemed appropriate by the SESAs.

(11) UC Program Reform

We received several recommendations that BAA–UC should be aligned with other State UC program reform efforts and that we should track and measure all reform efforts of States that implement BAA–UC. We believe that UC reform is of the utmost importance and have been diligently working to promote UC reform through the legislative process and have tracked and evaluated such efforts. Although we would like to see broad reform of the UC program, such reform is beyond the scope of this rule.

(12) Comment Period

Under the Administrative Procedure Act (APA), an agency is required only to provide a 30-day comment period and public hearings are not required by the APA for notice-and-comment rulemaking. We received several hundred responses from interested parties requesting that we extend the initial 45-day comment period ending on January 18, 2000, and/or that public hearings be held in venues around the country. Given the simple nature of the experiment and the relatively short length of the proposed rule, we thought that a 45-day comment period was adequate and that hearings were unnecessary. Some of the initial comments noted that the comment period fell during the holiday season, so we decided to extend the comment period 15 days through February 2, 2000, for a total 60-day comment period.

A few respondents requested in their timely submissions that we permit them to submit additional comments after February 2, 2000. However, the sheer volume of comments, as well as the extensive detail of some of the comments received, including the timely comments from the respondents asking to submit additional comments, convinced us that sufficient time was allotted for comments and that additional time was not necessary.

(13) Rulemaking Requirements

We received comments that this rule is subject to the Regulatory Flexibility Act requirements because it will have a significant economic impact on a substantial number of small entities, and it violates the Unfunded Mandates Reform Act of 1995.

Respondents challenging our conclusion that BAA–UC is not subject to the Regulatory Flexibility Act requirements suggested that the experiment will undoubtedly have a significant economic impact on a substantial number of small entities since the experiment will result in a potentially higher payment of UC due to the expansion of coverage to include new parents, thus requiring a regulatory flexibility analysis. However, the BAA–UC regulations impose no regulations upon small entities (*American Trucking Association* v. *EPA*, 175 F.3d 1027, 1044 (D.C. Cir. 1999)), rather, we are regulating the States that choose to experiment with BAA–UC. Furthermore, the Unfunded Mandates Reform Act of 1995 (UMRA) is not applicable to this regulation since this is not a ''Federal intergovernmental mandate'' as defined in section 421(5) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658), as amended by section 101(a)(2) of the UMRA. Indeed, we are not mandating that a State, local or tribal government, or the private sector implement BAA–UC.

(14) Model State Legislation

We received some comments about the Model State Legislation that was appended to the proposed rule in the NPRM. Some comments indicated that respondents interpreted the Model State Legislation to be required legislative language. Others suggested that the Model State Legislation be restructured with affirmative language to guarantee payment of BAA–UC and suggested that the Model State Legislation be changed to read ''compensation shall be provided'' rather than stating that compensation ''shall not be denied'' as published in the NPRM.

The Model State Legislation is provided only as a guide to aid the States that enact BAA–UC in developing State legislation: States are not required to use it. The Model State Legislation is written in the style that States typically use in their statutes. We think there is no substantive difference between the suggested language style and the style used in the Model State Legislation; therefore, no stylistic changes were made. States that elect to follow the

Model State Legislation must adapt it to their State UC laws.

IV. Explanation of Final Rule and Changes to Proposed Rule by Section

There is little difference between the proposed rule and the Final Rule. An explanation is provided where differences occur. Technical changes are not discussed.

Subpart A—General Provisions

Subpart A of rule discusses the purpose of the rule, the scope of the rule and critical definitions. The definitions of ''approved leave,'' ''newly-adopted child,'' ''placement,'' and ''parents'' warranted amendment and are discussed below. All other aspects of Subpart A remain unchanged from the proposed rule.

Definition of ''Approved Leave''

Respondents raised two concerns about ''approved leave'' as it is described in the NPRM—one that it would make individuals eligible for benefits while still employed and the other that it would inhibit eligibility by forcing legally permissible leave to pass an employer approval test.

In the preamble to the NPRM, ''approved leave'' was described as ''an approved, temporary separation from a specific employer.'' Pointing to the phrase ''specific employer,'' concerns were expressed that this would permit employees who work for multiple employers to be eligible for BAA–UC based on a separation from one employer while continuing to work for other employers and that the individual's UC would be charged to the other employers. We also received comments about whether individuals could receive partial BAA–UC while working a reduced number of hours for the same employer.

The Federal-State UC program already is designed to accommodate situations where an individual separates from one job while continuing another and where individuals are continuing to work at reduced hours. We expect States to handle these types of BAA–UC situations just as they currently handle similar situations. For example, an individual continuing to hold a job will have earnings; these earnings will affect the individual's eligibility, including the amount payable, under BAA–UC.

Other respondents expressed concern that the ''approved leave'' definition limits the availability of BAA–UC; some respondents suggested that the definition of ''approved leave'' be amended to include ''required'' leave. The concern was that some employees are granted leave under law or contract, regardless of whether the employer ''approves'' the leave. The respondents were concerned that, under the definition of ''approved leave'' in the NPRM, these employees would not be eligible for BAA–UC.

We do not intend to exclude from BAA–UC eligibility employees who are provided leave by law or contract. To assure that this group of employees is not unintentionally excluded from BAA–UC, the definition of ''approved leave'' is amended to read ''a specific period of time, agreed to by both the employee and employer or as required by law or employment contract (including collective bargaining agreements), during which an employee is temporarily separated from employment and after which the employee will return to work for that employer.''

The other concerns about the definition of ''approved leave'' stemmed from the notion that only employers covered by the FMLA would approve leave and that, as a result, employees of smaller businesses would not be eligible for BAA–UC. As a result, some respondents thought there was conflicting information within the NPRM regarding eligibility because employees of smaller businesses would not be eligible for BAA–UC if eligibility is conditioned on approved leave. Some respondents suggested as a remedy that the State option to limit BAA–UC to individuals on approved leave be eliminated. We expect States to evaluate whether employees of small businesses would be unable to obtain approved leave and to determine whether to cover these individuals under 20 CFR 604.10, which applies to employees who otherwise leave their employment.

Definition of ''Newly-Adopted Child''

In an effort to afford States maximum flexibility and in acknowledgment that adopted children may be more than one year old, the definition of ''newly-adopted child'' in the NPRM included no limitation on the age of an adopted child. We received comments stating that, without an age limitation on adopted children for purposes of BAA–UC, there was potential for adults who adopted adults to be eligible for BAA–UC.

The BAA–UC experiment is clearly designed for the parents of young children and will test whether providing those parents with BAA–UC during the first year of a child's life or placement for adoption will help maintain or even promote their connection to the workforce by allowing them time to bond with their children and develop stable child care systems while adjusting to the accompanying changes in lifestyle before returning to work. To help assure that BAA–UC is used for this purpose, we are establishing an age limitation of 18 years old or less within the definition of ''newly-adopted children.'' This age limitation is within the commonly accepted age range of a ''child'' and also acknowledges that adopted children may be more than one year old. The definition of ''newly-adopted children'' is amended to read ''means children, age 18 years old or less, who have been placed within the previous 12 calendar months with an adoptive parent(s).''

Definition of ''Placement''

Respondents also raised concerns about the definition of ''placement.'' *Placement* was defined in the NPRM as ''the time a parent becomes legally responsible for a child pending adoption.'' Comments indicated a concern that individuals in the process of adopting a child and who have actually received the child would be precluded from receipt of BAA–UC because adoption agencies may retain legal responsibility for a child until the adoption is complete. Therefore, to assure that these parents are not excluded on a technicality, the word ''legally'' has been deleted from the definition. Generally, foster parents are excluded from BAA–UC; however, this change may, in some situations, permit some foster parents in the adoption process to be eligible for BAA–UC. ''Placement'' is defined in this rule as: ''the time a parent becomes responsible for a child pending adoption.'' A minor change was made to the definition of ''parents'' to make it more compatible with the definition of ''placement.''

Subpart B—Federal UC Requirements

No changes were made to this section; therefore, Subpart B of the Final Rule is the same as Subpart B in the NPRM.

Subpart C—BAA–UC Eligibility

A review of Subpart C resulted in two changes. First, the subpart title was changed to ''Subpart C—Coverage and Eligibility'' to better reflect the subpart's content. Second, the review revealed that § 604.22 was unnecessary because it did not regulate State actions. Consequently, § 604.22 is not included in the Final Rule.

Executive Order 12866

This rule is a ''significant regulatory action'' within the meaning of Executive Order 12866 because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order. It is also ''economically significant'' within the meaning of Section 3(f)(1) of that Executive Order because it may have an annual effect on the economy of $100 million or more. Specifically, the estimated costs range from zero to $196 million. Accordingly, this rule was submitted to, and reviewed by, the Office of Management and Budget. As directed by Section 6(a)(3)(C) of Executive Order 12866, we have prepared a Regulatory Impact Analysis that assesses the costs, benefits, and alternatives associated with this regulation. The Regulatory Impact Analysis is available to the public as part of the rulemaking record.

We have evaluated the rule and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although the rule will impact States and State agencies, it will not adversely affect them in a material way. The rule would permit States to voluntarily participate in an experiment to determine the effectiveness of using the UC program to support parents taking leave from their employment to be with their newborns or newly-adopted children; it would not impose any new requirements on States.

Paperwork Reduction Act

We have determined that this rule contains no information collection requirements. If the evaluation of this experiment requires information collections covered under the Paperwork Reduction Act, we will seek OMB approval at that time.

Executive Order 13132

This regulation has been reviewed in accordance with Executive Order 13132 regarding federalism. The order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict States' policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. We do not believe that Executive Order 13132 applies. In the interest of consultation, however, we invited major intergovernmental associations to a meeting at which we briefed the associations on the proposed rule.

Executive Order 12988

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995

This rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). We have determined that this rule does not include any Federal mandate. States have full discretion to decide whether or not to enact BAA–UC.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. The rule affects States and State agencies, which are not within the definition of ''small entity'' under 5 U.S.C. 601(6). Moreover, States have complete discretion in deciding whether or not they will enact BAA–UC under this regulation. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

We certify that this rule has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. We conclude that the rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by permitting States to enable more parents to take leave from their employment to be with their newborns or newly-adopted children.

Congressional Review Act

Consistent with the Congressional Review Act, 5 U.S.C. 801, *et seq.*, we will submit to Congress and the Comptroller General of the United States, a report regarding the issuance of this Final Rule prior to the effective date set forth at the outset of this document.

OMB has determined that this rule is a ''major rule'' as defined in the Congressional Review Act. The rule is likely to result in an annual effect on the economy of $100 million or more. The cost estimate is discussed in Section III.C.(2)(a) of the ''Supplementary Information,'' above. The effective date of this rule has been adjusted in accordance with the requirements of the Congressional Review Act.

Catalogue of Federal Domestic Assistance Number

This experiment is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 604

Unemployment compensation.

Signed at Washington, DC on June 7, 2000.

Alexis M. Herman,

Secretary of Labor.

Words of Issuance

For the reasons set forth in this preamble and in the NPRM, Chapter V of Title 20, Code of Federal Regulations, is amended by adding new part 604 to read as follows:

PART 604—REGULATIONS FOR BIRTH AND ADOPTION UNEMPLOYMENT COMPENSATION

Subpart A—General Provisions

Sec.
604.1 What is the purpose of this regulation?
604.2 What is the scope of this regulation?
604.3 What definitions apply to this regulation?

Subpart B—Federal Unemployment Compensation Program Requirements

604.10 Beyond the interpretation of the able and available requirements for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

Subpart C—Coverage and Eligibility

604.20 Who is covered by Birth and Adoption unemployment compensation?
604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Authority: 42 U.S.C. 503 (a)(2) and (5) and 1302(a); 26 U.S.C. 3304(a)(1) and (4) and 3306(h); Secretary's Order No. 4–75 (40 FR 18515); and Secretary's Order No. 14–75 (November 12, 1975).

Subpart A—General Provisions

§ 604.1 What is the purpose of this regulation?

The regulation in this part allows the States to develop and experiment with innovative methods for paying unemployment compensation to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. States' experiences with Birth and Adoption unemployment compensation will enable the Department of Labor to test whether its interpretation of the Federal ''able and available'' requirements promotes a continued

connection to the workforce in parents who receive such payments.

§ 604.2 What is the scope of this regulation?

The regulation in this part applies to and permits all State unemployment compensation programs to provide benefits to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. A State's participation is voluntary.

§ 604.3 What definitions apply to this regulation?

The following definitions apply to the regulation in this part:

(a) *Approved leave* means a specific period of time, agreed to by both the employee and employer or as required by law or employment contract (including collective bargaining agreements), during which an employee is temporarily separated from employment and after which the employee will return to work for that employer.

(b) *Birth and Adoption unemployment compensation* means unemployment compensation paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

(c) *Department* means the United States Department of Labor.

(d) *Newborns* means children up to one year old.

(e) *Newly-adopted children* means children, age 18 years old or less, who have been placed within the previous 12 calendar months with an adoptive parent(s).

(f) *Parents* means mothers and fathers (biological, legal, or who have custody of a child pending their adoption of that child).

(g) *Placement* means the time a parent becomes responsible for a child pending adoption.

(h) *State(s)* means one of the States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Subpart B—Federal Unemployment Compensation Program Requirements

§ 604.10 Beyond the interpretation of the able and available requirement for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

No, the regulation in this part does not change the Federal unemployment compensation requirements. Under its authority to interpret Federal unemployment compensation law, the Department interprets the Federal able and available requirements to include experimental Birth and Adoption unemployment compensation. The regulation in this part applies only to parents who take approved leave or otherwise leave employment to be with their newborns or newly-adopted children.

Subpart C—Coverage and Eligibility

§ 604.20 Who is covered by Birth and Adoption unemployment compensation?

If a State chooses to provide Birth and Adoption unemployment compensation, all individuals covered by the State's unemployment compensation law must also be covered for Birth and Adoption unemployment compensation. Just as with current unemployment compensation programs, individuals may not be denied experimental Birth and Adoption unemployment compensation based on facts or causes unrelated to the individual's unemployment, such as industry, employer size or the unemployment status of a family member. The introduction of such facts or causes would be inconsistent with Federal unemployment compensation law.

§ 604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Parents may be eligible for Birth and Adoption unemployment compensation during the one-year period commencing with the week in which their child is born or placed with them for adoption. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to the Preamble—Unemployment Insurance Program Letter No. 26–00

U.S. Department of Labor

Employment and Training Administration, Washington, D.C. 20210

CLASSIFICATION: UI

CORRESPONDENCE SYMBOL: TEUL

DATE: May 31, 2000

DIRECTIVE: Unemployment Insurance Program Letter No. 26–00.

TO: All State Employment Security Agencies.

FROM: Grace A. Kilbane, Administrator, Office of Workforce Security.

SUBJECT: Model State Legislation and Commentary to aid States implementing Birth and Adoption Unemployment Compensation Unemployment Compensation (BAA–UC).

Rescissions: None.

Expiration Date: Continuing.

1. *Purpose.* To provide Model State Legislation and Commentary for States implementing BAA–UC. The Model State Legislation is offered as a guide for States that need to amend their current UC laws, it is not required. The Commentary provides information on the Model State Legislation and will aid States in making policy decisions.

2. *References.* 20 Code of Federal Regulations (CFR) parts 604, 615, and 625; sections 303(a)(1) and (8), Social Security Act (SSA); Unemployment Insurance Program Letters (UIPLs) No. 21–80 and No. 44–93; Family and Medical Leave Act, Pub. Law 103–3; the *Manual of Employment Security Legislation* (rev. 1950); UIPL No.787 transmitting the Secretary of Labor's Decision of September 25,1964, *In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954;* and *Jenkins* v. *Bowling,* 691 F.2d 1225 (7th Cir. 1982).

3. *Background.* The Department of Labor (Department) created, by regulation, an opportunity for State agencies that administer the UC program to pay, as part of a voluntary, experimental effort, UC to parents who take time off from employment after the birth or placement for adoption of a child. (20 CFR Part 604.) This regulation allows States the opportunity to develop innovative ways of using UC to support parents taking approved leave or who otherwise leave their employment to be with their newborns or newly-adopted children and will permit us to evaluate the effectiveness of using the UC program for these or related purposes.

4. *Model State Legislation.* The attached Model State Legislation is offered as an optional aid for States that choose to enact BAA–UC. The Model State Legislation assumes that States will provide BAA–UC based on the same earnings and employment criteria that apply to other individuals. It also assumes that States will provide BAA–UC for no more than 12 weeks, that BAA–UC payments will count toward the maximum number of weeks of UC, and that employers will not be charged for BAA–UC. Further, the Model State Legislation provides for the deduction of other income from BAA–UC. The Model State Legislation conforms to the regulations at 20 CFR Part 604; however, States have wide latitude in creating their BAA–UC provisions within the parameters of those regulations.

5. *Commentary.* A Commentary in question-and-answer format is also attached (Attachment II) as an aid for States. The Commentary discusses policy approaches taken in the Model State Legislation and also discusses other matters.

6. *Action.* We suggest that States consider developing a BAA-UC experiment to provide partial wage replacement to parents on approved leave or who otherwise leave employment to be with their newborns and newly-adopted children. We expect that States will take into consideration the impact of such an effort on their unemployment funds prior to enactment. Appropriate staff should be provided with this UIPL.

7. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

Attachments
Attachment I—Model State Legislation
Attachment II—Commentary

Attachment I—Model State Legislation

Section____. Birth and Adoption Unemployment Compensation

(a) A parent on a leave of absence from his/her employer or who left employment to be with his/her child during the first year of life, or during the first year following placement of a child age 18 or less with the individual for adoption, shall not be denied compensation under Section ____for voluntarily leaving employment, Section____relating to availability for work, Section____relating to inability to work, or Section____for failure to actively seek work.

(b) For purposes of this section, the following definitions apply:

(1) *Parent* means a mother or father (biological, legal, or who has custody of a child pending her or his adoption of that child); and

(2) *Placement* means the time a parent becomes responsible for a child pending adoption in accordance with [cite State adoption law].

(c) Section____, concerning the reduction of the amount of compensation due to receipt of disqualifying income, shall apply to payments under this section. In addition, the following payments shall cause a reduction in the compensation amount:

(1) Any payment from the employer resulting from a birth or adoption described in subsection (a); and

(2) Any payment resulting from a birth or adoption described in subsection (a) from a disability insurance plan contributed to by an employer, in proportion to the employer's contribution to such plan.

(d) Compensation is payable to an individual under this section for a maximum of 12 weeks with respect to any birth or placement for adoption.

(e) Each employer shall post at each site operated by the employer, in a conspicuous place, accessible to all employees, information relating to the availability of Birth and Adoption unemployment compensation.

(f) Any compensation paid under this section shall not be charged to the account of the individual employer.

(g) Two years following the effective date of this legislation, the commissioner shall issue a report to the governor and the legislature evaluating the effectiveness of Birth and Adoption unemployment compensation.

(h) This section shall be applied consistent with regulations issued by the U.S. Department of Labor.

Attachment II—Commentary

General

1. Must States implement Birth and Adoption unemployment compensation (BAA–UC)?

No. This effort is voluntary for the States. However, implementation of BAA–UC will require some legislation on the part of every State seeking to adopt it. The Model State Legislation is provided for the convenience of States that wish to implement BAA–UC.

2. Does the BAA–UC regulation enable a State to pay UC for other types of family or medical leave?

No. This regulation enables States to pay UC, on an experimental basis, to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. The experiment will test whether providing UC to individuals within this group will strengthen their workforce attachment and will provide data on the impact of BAA–UC on employees, employers, and States' unemployment funds. Permitting payment of UC for other types of family leave or care would be inconsistent with this experimental effort.

3. Must all employer-paid leave be exhausted before BAA–UC is available?

No. BAA–UC is designed to provide partial wage replacement to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. The Model State Legislation assumes that any wages paid for the period of employer-provided leave will be deducted. However, States need not deduct these wages from BAA–UC.

4. Does the BAA–UC regulation impose any solvency requirements upon the States before they enact BAA–UC?

No. The Department expects that a State will not enact changes without assessing the effect on the solvency of its unemployment fund. A State in a weak solvency position should not conduct a BAA–UC experiment without creating a means of financing it. Each State has the responsibility to assess the cost to the State's unemployment fund whenever coverage, benefit expansions, or tax changes are considered within the State's UC program. We will provide technical assistance to States needing assistance in determining their solvency positions.

Monetary Qualifications and Benefits

5. What are the earnings and employment requirements for BAA–UC?

States may establish their own requirements. The Model State Legislation assumes that States will use the same earnings and employment criteria that apply to all other individuals.

6. What is the weekly benefit amount for individuals eligible for BAA–UC?

States may establish their own weekly benefit amounts. The Model State Legislation assumes that individuals eligible for BAA–UC will receive the same weekly benefit amount as other individuals eligible for UC.

7. How does the receipt of other income effect payment of BAA–UC?

States will determine whether BAA–UC will be reduced by other income. Under the Model State Legislation, the amount of BAA–UC will be reduced in the same manner as any other payment of UC as provided under State law. The Model State Legislation also provides for the deduction of any payment from the employer as a result of the birth or placement for adoption, and for the deduction of any disability insurance payment received as a result of the birth or placement for adoption in proportion to the employer's contribution to the disability insurance plan. This provision, which is limited to payments triggered by the same event which triggers BAA–UC, reflects the view that the unemployment fund should not be held responsible when wage replacement is available from other sources, particularly when both payments are financed by the employer. States should examine their laws to determine if all types of appropriate income are, or should be, deductible. For example, some leave payments which are not normally deductible under State law may cover costs of birth and adoption leave.

8. How does the BAA–UC entitlement relate to UC payments where conventional able and available requirements apply?

States are free to determine this. The Model Legislation assumes that BAA–UC counts toward the maximum number of weeks of conventional UC.

Period of Eligibility

9. When may BAA–UC benefits begin?

Under 20 CFR 604.21, parents may receive BAA–UC only during the one-year period commencing with the week in which the child is born or placed for adoption. For example, an individual taking leave in the 51st week following birth or placement for adoption, would be eligible for BAA–UC only for weeks 51 and 52. Periods preceding the week of birth or placement for adoption are not compensable. States are free to reduce the one-year period.

10. How many weeks of BAA–UC may individuals receive?

States are free to determine this. The Model State Legislation provides a maximum duration of 12 weeks per individual with respect to any one birth or adoption. States may also relate the duration of leave to the individual's weekly amount of UC. For example, for each birth or adoption, an individual may receive an amount equal to 12 times the individual's weekly UC amount.

To prevent confusion between the FMLA and BAA–UC, States should inform potential BAA–UC beneficiaries of the dissimilarities between BAA–UC and leave under the FMLA (for example, BAA–UC does not guarantee job retention).

11. If a child is born in the middle of the week or the placement occurs in the middle of the week, is BAA–UC payable for this week?

Under the Model State Legislation, BAA–UC would be payable for this week, assuming all applicable eligibility conditions, such as the deductible income provisions, are met. States may provide the full weekly compensation amount for this week or prorate the weekly amount to reflect only periods following birth or adoption. If the amount is prorated, the State may pay the remaining balance for the last partial week if the individual is still on leave.

12. Must the individual serve a waiting period?

No. Nothing in Federal law requires States to have a waiting week for conventional UC or BAA–UC. However, not having a waiting week would eliminate the 50 percent Federal share for the first week of all Extended Benefits claims. Under 20 CFR 615.14(c)(3), a State is not entitled to a Federal share for the first week of Extended Benefits if the State's law provides ''at any time or under any circumstances'' for the payment of UC for the first week of unemployment.

13. When is a child considered ''placed'' for adoption?

Under 20 CFR 604.3(g), placement occurs at the time a parent becomes responsible for a child pending adoption. State UC agencies should consult the adoption laws of their States to determine precisely when placement occurs.

Other Eligibility Issues

14. May both parents receive BAA–UC? If so, may they both receive such compensation at the same time?

The answer to both questions is ''yes.'' States implementing BAA–UC must allow both parents, if otherwise eligible, to receive BAA–UC concurrently or consecutively. A State may not prohibit payment of BAA–UC simply because the other parent is taking leave for the same purpose. A State law which does so is inconsistent with Federal law because the eligibility of one parent will be determined based on whether the other parent is receiving UC. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual's unemployment. (See Secretary of Labor's Decision of September 25, 1964, *In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954,* transmitted by Unemployment Insurance Program Letter No. 787, October 2, 1964.) The recipient status of the other parent is unrelated to the fact or cause of an individual's unemployment. Thus, both parents may receive BAA–UC, whether concurrently or consecutively. Similarly, States may not limit use of BAA–UC to the ''primary'' parent.

15. Must BAA–UC apply to individuals employed by all employers subject to State UI law?

Yes. As explained in the previous answer, States may not impose eligibility conditions not related to the fact or cause of the individual's unemployment. Assuming the services are taxable for UC, States may not, for example, limit BAA–UC based on employer size.

16. May States provide BAA–UC to individuals who otherwise leave employment (not on approved leave) to be with their newborns or newly-adopted children?

Yes. While States are free to determine their own requirements, there are compelling reasons for providing BAA–UC to individuals who otherwise leave employment. Although many employers may grant leave, others may not. The Department believes that all parents should be treated identically for UC purposes when they take time away from employment to be with their newborn or newly-adopted child. As such, their eligibility for BAA–UC should not be based on whether an employer grants the leave, but on the parent's reason for wanting to take the leave.

17. May eligibility be conditioned on whether the individual gave notice to the employer?

Yes. Although the Model State Legislation does not provide for such a condition because it may result in denials due to the technicality of when the individual requested leave, States may impose it. The basis of such a requirement is that employers should be given sufficient time to accommodate the leaving/absence of the individual. If such a provision is included, the Department recommends that the notice be required to be given no more than 30 days prior to birth or placement, but only where practicable.

18. Must States declare an overpayment of benefits if the individual does not return to work?

No, although a State may choose to declare an overpayment of benefits if the individual fails to return to work. However, States may not delay payment until after the individual returns to work. Section 303(a)(1), SSA, requires the full payment of benefits when due, precluding States from delaying payment while awaiting the individual's return to work. See *Jenkins* v. *Bowling*, 691 F.2d 1225 (7th Cir. 1982).

19. May an individual be paid BAA–UC under the Federal-State extended benefit program or any of the federally funded unemployment programs?

It depends on the program. Benefits under the UC for Federal Employees (UCFE) and UC for Ex-Servicemembers (UCX) programs are, by Federal law, required to be paid on the same terms and subject to the same conditions as State benefits (with exceptions not relevant here). Therefore, BAA–UC will be paid to individuals under these programs to the same extent as under State law.

Individuals may only receive Disaster Unemployment Assistance (DUA) when their unemployment is caused by a disaster as provided in 20 CFR Part 625. However, if they meet their State's Birth and Adoption UC provisions, then they will satisfy the availability requirement at § 625.4(g), and so may continue to qualify for DUA. For example, an individual who is unemployed due to a major disaster may later give birth. If this individual satisfies the BAA–UC requirements in the State's law, she may receive DUA.

Extended Benefit claimants may not receive Birth and Adoption UC since they cannot meet the systematic and sustained work search requirements in 20 CFR 615.8(g).

Individuals claiming trade readjustment allowances (cash benefits) under the Trade Adjustment Assistance and the North American Free Trade Act Transitional Adjustment Assistance programs will be ineligible since such individuals are required to either be in full-time training or conduct the systematic and sustained work search required for the Extended Benefit program.

Financing Costs of BAA–UC

20. May BAA–UC costs be spread among employers?

Yes. States are free to spread the costs—commonly called ''noncharging''—of BAA–UC. We think that spreading BAA–UC costs among all employers is the most equitable means of financing this experiment; therefore, the Model State Legislation provides for this. This position applies to both contributory and reimbursing employers.

Noncharging contributory employers is common in most States; however, some States do not noncharge reimbursing employers. States interested in noncharging reimbursing employers for BAA–UC are referred to UIPLs No. 21–80 and No. 44–93 (58 FR 52790, 52792 (April 12, 1993)) for general information about noncharging reimbursing employers.

21. May BAA–UC costs be paid from a State fund other than the State's unemployment fund, for example, a State's temporary disability insurance (TDI) fund?

Yes. Nothing in Federal UC law governs the treatment of moneys in these funds because they are financed by a separate tax and held separately from the State's unemployment fund. For example, a State with a TDI program may enact a special disability insurance tax on employers and deposit the proceeds in a disability fund. If the State chooses to use one of these funds (or create such a fund) to pay birth and adoption leave benefits, the requirements of the Department's BAA–UC regulation will not apply.

Administrative Costs

22. May States use UC administrative grants received from the Federal government to pay for the administration of BAA–UC?

Provided that all the requirements of the BAA–UC regulation are met, the use of UC administrative grants is permissible, including for purposes of studying and evaluating BAA–UC. However, if the regulation's requirements are not met, the expenditures of grant funds are not for the proper and efficient administration of the State's law as required by section 303(a)(8), SSA.

Reporting

23. Will States need to amend their laws to address any Federal reporting requirements concerning BAA–UC?

Although this is a matter for States to determine, the Department anticipates that few, if any, States will need to amend their laws since most State laws already contain language concerning reporting. Many of these laws are based on the language on page 95 of *The Manual of Employment Security Legislation*, as revised September 1950, which requires that the agency ''make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.''

24. What are the reporting requirements?

The Department has not yet finalized a methodology for evaluating BAA–UC. When that methodology is completed, State reporting requirements will be issued in a separate information collection request and, if subject to the Paperwork Reduction Act, published for public comment in the **Federal Register**.

[FR Doc. 00–14801 Filed 6–12–00; 8:45 am]

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Federal Register

Tuesday,
June 13, 2000

Part III

Department of Education

Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center; Inviting Applications for One New Award for FY 2000 and Final Priority; Notices

DEPARTMENT OF EDUCATION

CFDA No. 84.206R

Office of Educational Research and Improvement; Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center; Notice Inviting Applications for One New Award for Fiscal Year (FY) 2000.

Purpose of Program: To support a national research and development center to conduct research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods to serve all students; and to conduct program evaluations, surveys, and the collection, analysis, and development of information on gifted and talented education. Emphasis is given to the identification and services for students not traditionally included in gifted and talented education, (including individuals of limited-English proficiency, economically disadvantaged individuals, and individuals with disabilities).

For fiscal year (FY) 2000 the competition for a new award focuses on projects designed to meet the priority we describe in the notice of final priority published elsewhere in this issue of the **Federal Register**.

Eligible Applicants: Institutions of higher education, State educational agencies, or a combination or consortium of these entities.

Applications Available: June 16, 2000.

Deadline for Transmittal of Applications: August 1, 2000.

Estimated Available Funds: This center will be awarded as a cooperative agreement. In fiscal year 2000, $1.75 million is available for the first year of funding for a national research and development center to study the education of gifted and talented students. The funding levels for years 2 through 5 are estimated at $1.75 million for each fiscal year. Future funding will depend upon the availability of funds and needs as reflected in the approved application.

Maximum Award: We will reject any application that proposes a budget exceeding $1.75 million for a single budget period of 12 months.

Estimated Number of Awards: One.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Page limit: the application must include: title page form, abstract, research narrative, management plan, biographical sketches for principal investigators and other key personnel, budget summary form with budget narrative, and statement of equitable access (GEPA 427). The abstract is limited to one page, the research narrative is limited to 200 pages, the management plan is limited to 10 pages, and biographical sketches are limited to 3 pages each for the principal investigator and other key personnel. Use 8½ x 11 inch paper with printing on only one side. Appendix materials will not be read and should not be submitted. Pages in excess of these limitations will be removed unread. We strongly encourage applicants to use double-spacing, a 12-point font, and 1-inch margins. Reviewers are able to conduct the highest quality review when applications are concise and easy to read, with pages consecutively numbered.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 84, 86 (Part 86 applies only to Institutions of Higher Education), 97, 98, and 99; and (b) 34 CFR part 700.

Priority: This competition focuses on projects designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the absolute priority.

For Applications or Information Contact: Beverly E. Coleman, U.S. Department of Education, 555 New Jersey Avenue, NW, room 611A, Washington, DC 20208–5521. Telephone: (202) 219–2280; E-mail: beverly_coleman@ed.gov. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications or Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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Program Authority: 20 U.S.C. 8034(c).

Dated: June 8, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–14890 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Education Program: National Research and Development Center

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for the Office of Educational Research and Improvement (OERI) announces a final priority under the Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center (Center). The Assistant Secretary will use this priority for the Center competition in fiscal year (FY) 2000. This priority focuses on research to obtain a better understanding of the reasons for the under-representation of students from some minority groups among top performing students, and on analyzing national data sets to better understand the educational status of and opportunities for gifted and talented, high-achieving or high ability students in the United States.

EFFECTIVE DATE: This priority is effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly Coleman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 611A, Washington, DC 20202–5521. Telephone: (202) 219–2280. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: OERI administers the Jacob K. Javits Gifted and Talented Students Education Act of 1994 (Javits Act), which is authorized under Part B of Title X of the Elementary and Secondary Education Act (ESEA) (20 U.S.C 8031 *et seq.*). The purposes of the Javits Act are (1) to support a coordinated program of research, demonstration projects, personnel training, and similar activities designed to build a nationwide capability in elementary and secondary schools to meet the special educational needs of gifted and talented students; (2) to encourage rich and challenging curricula for all students through the appropriate application and adaptation of materials and instructional methods used with gifted and talented students; and (3) to supplement and make more effective the expenditure of State and local funds devoted to gifted and talented students.

The Secretary is authorized, under the Javits Act, to create a national research center to carry out: (1) Research on methods and techniques for identifying and teaching gifted and talented students, and for using gifted and talented education programs and methods to serve all students; and (2) program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the purposes of the Act.

The Javits Act gives the highest priority to: (1) Identifying and serving gifted and talented students who may not be identified and served through traditional assessment methods (including economically disadvantaged, individuals of limited-English proficiency, and individuals with disabilities); and (2) programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through the cooperative efforts of State and local educational agencies, institutions of higher education, and other public and private agencies.

There continues to be significant under-representation of some minority groups among top-performing students across the nation. In one national sample, only ten percent of top performing students are African-American, Latino, or Native American, even though they make up about 30 percent of the population. More research is needed to better understand the reasons for these gaps in achievement among top-performing students, and on methods for overcoming these gaps.

In addition, important information on gifted and talented high-ability and high achieving students is contained in a number of national and international studies. These include the National Education Longitudinal Study (NELS), the Early Childhood Longitudinal Study, and the National Assessment of Educational Progress (NAEP), and the Third International Mathematics and Science Study (TIMSS), among others. In most cases, secondary analyses of these studies have not been conducted to examine the status of educational opportunities for gifted and talented, high-ability, and high-achieving students in the United States.

The Assistant Secretary for the Office of Educational Research and Improvement published a notice of proposed priority for this program in the **Federal Register** on March 27, 2000 (65 FR 16290). There are no differences between the notice of proposed priority and this notice of final priority.

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the notice of proposed priority, four parties submitted comments on the proposed priority. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows:

Comment: Three commenters said that this priority was too narrow and limited and did not address the major unmet needs now facing the field of educating gifted students. They suggested other areas such as curriculum development, cognitive processes, the role of families in talent development, personnel preparation, program evaluation, gifted students with disabilities, gifted girls and women, and early recognition and cultivation of talent.

Discussion: We agree that there are many areas in gifted and talented education that would benefit from more research knowledge. The resources available under this program, however, are not sufficient to address all those needs adequately. In light of these circumstances, we have concluded that targeting the available resources on a few issues that are high priorities for the nation is the best way to create a body of work that will move the field forward. A central mission of the Javits Program is to increase the participation of under-represented groups in advanced educational opportunities. This issue is of the highest national interest.

Changes: None.

Comment: Three commenters questioned the use of national and international databases to provide substantive information on gifted and talented student populations.

Discussion: We agree that national data collections cannot provide all of the answers concerning the educational needs of gifted and talented students. However, the field of gifted and talented education lacks some very basic information that these national and international studies can provide. For example, how many students are served in gifted and talented program nationwide? What is the ethnic and racial composition of the students in gifted and talented programs? What happens to children who start school two or more years ahead of their peers in reading or mathematics? What opportunities optimize their educational achievement? What preschool experiences and parental styles contribute to fully developing the talents of students? Why are there achievement differences between top performing students in this country and in others?

The authorizing statute for the Javits program states that the Center carries out research and evaluation activities funded by this program. Therefore, we believe that some portion of the work done by the Center should be directed to analyzing existing national studies so that we have better information on the educational needs of gifted and talented students.

Changes: None.

Comment: One commenter said that a priority is to put into practice knowledge of exemplary practices, through a technical assistance center.

Discussion: We agree that it is important to translate knowledge of exemplary strategies into practice and to provide technical assistance in this area. As such, we are considering pursuing this goal in the future with funds from another part of that Javits Program. We believe that the funds available for the research center are limited and should remain focused on basic and applied research and evaluation in gifted and talented education.

Changes: None.

Comment: One commenter wrote in full support of the priority. The commenter reiterated the importance of focusing the research agenda on the educational needs of the growing number of underrepresented low-income and minority students with great potential.

Changes: None.

Note: This notice does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only one application that meets this absolute priority.

Priority—Research on Gifted and Talented Students

The Secretary will only fund a Center application that proposes to carry out the following activities—

(a) Conducts a coherent and sustained program of research that:

(1) Investigates the causes for disparities in achievement at the highest levels of performance among various racial and ethnic groups;

(2) Studies models for increasing the proportion of underrepresented students performing at the highest levels; and

(3) Generates findings and applications that build the capacity of teachers and schools to improve the performance of under-represented students.

(b) Informs the research carried out under paragraph (a) by conducting analyses of existing national and international databases to determine what is known about the opportunities available to, and educational outcomes of gifted and talented, high achieving or high ability students from these studies. Special attention would be given to studies that provide analyses that:

(1) Lead to a better understanding of what contributes to the educational achievement of these students, disaggregated by socio-economic status and race;

(2) Frame questions not yet being asked that will guide future discussion and inquiry;

(3) Propose new approaches to enduring problems; and

(4) Influence discussion of subsequent research, practice, and policy activities.

(c) Reserves five percent of each budget period's funds to support activities that fall within the Center's priority area, are designed and mutually agreed to by the Center and OERI, and enhance OERI's ability to carry out its mission. These activities may include developing research agenda, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities.

(d) Prepares, at the end of the award period, a report that synthesizes the findings and advances in knowledge that resulted from the Center's program of work and that describes the potential impact on the improvement of American education, including any observable impact to date.

Applicable Program Regulations: 34 CFR Part 700.

Program Authority: 20 U.S.C. 8034(c)

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(Catalog of Federal Domestic Assistance Number: 84.206R Jacob K. Javits National Research and Development Center for Gifted and Talented Education Program)

Dated: June 8, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–14891 Filed 6–12–00; 8:45 am]

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Federal Register

Tuesday,
June 13, 2000

Part IV

Office of Personnel Management

5 CFR Part 630

Sick Leave for Family Care Purposes; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AI76

Sick Leave for Family Care Purposes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to expand the use of sick leave for family care purposes. Under the final regulations, an employee may use a total of up to 12 weeks of accrued sick leave each year to care for a family member with a serious health condition. This benefit broadens the options available for employees to meet their family responsibilities.

EFFECTIVE DATE: June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–2858, FAX (202) 606–0824, or email to *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION: On May 24, 1999, President Clinton issued a memorandum directing the Office of Personnel Management (OPM) to expand the use of paid sick leave for family care purposes. On February 9, 2000, OPM issued proposed regulations consistent with the President's goal of eliminating ''a significant barrier to caring for a family member with a serious health condition.'' The regulations proposed to permit full-time employees to use a total of up to 12 administrative workweeks of accrued sick leave each leave year to care for a family member with a serious health condition. The definition of ''family member'' includes the following relatives of the employee: (a) Spouse and parents thereof; (b) children, including adopted children, and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. ''Serious health condition'' has the same meaning as found in OPM?s regulations at 5 CFR 630.1202 for administering the Family and Medical Leave Act of 1993 (FMLA).

The 45-day comment period ended on March 27, 2000. OPM received 151 comments, 134 from individuals, 14 from agencies, 2 from employee associations, and 1 from a labor organization. The comments were overwhelmingly positive. The labor organization stated that these changes were long awaited and quite welcome. Many of the commenters who supported the adoption of the new regulations mentioned a previous experience dealing with a family member with a long-term or terminal illness and expressed gratitude that other employees would now have an opportunity to use their accrued sick leave in similar situations. Others mentioned current family medical situations that have caused them to exhaust their annual leave and the currently available 13 days of sick leave for family care. One commenter stated that if the employee were the one who was sick or injured, using up to 12 weeks of sick leave would be a non-issue and that the use of sick leave should remain a non-issue when an employee's family member requires the employee's care for an extended period.

One commenter stated that the proposed change would reassure employees that efforts to conserve sick leave are beneficial. Another individual noted that employees with sufficient amounts of sick leave to make use of the new program obviously have not been abusing their sick leave and are dedicated employees. One commenter pointed out that since family health crises occur only a few times in our lives, this time off would not adversely affect an agency's long-term goals. An employee association commented that employees and family members stationed overseas often must be evacuated for medical conditions and that the new regulations would allow an employee to accompany a family member for what may turn out to be a protracted course of treatment.

Nine commenters opposed the concept of allowing Federal employees to use additional sick leave for family care purposes. Two agencies expressed concern that the regulations as proposed would give employees more flexibility in the use of sick leave than a literal reading of the President's memorandum of May 24, 1999, would indicate.

The President intended to make the expanded use of sick leave available to employees to use to care for all family members with a serious health condition. Limiting this benefit to caring for a spouse, son or daughter, or parent with a serious health condition would impose a significant hardship on employees who need to care for additional, but equally important, loved ones in their time of need. For example, the expanded use of sick leave would permit an employee to care for a grandchild who is suffering from leukemia or to care for an adult child receiving kidney dialysis or in the final stages of a terminal disease.

Seven agencies were concerned that the proposed regulations would permit an employee to use 12 weeks of sick leave each year to care for a family member with a serious health condition and then use an additional 12 weeks of leave without pay under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. The agencies stated that 24 weeks of leave would be a tremendous hardship on a manager's ability to manage the work of the organization. One agency expressed the belief that the current sick leave provisions and FMLA entitlements provide sufficient flexibility to employees. Another agency concluded that while being able to meet the mission of the agency while balancing work and family needs of employees is of utmost importance, managers have expressed concern that this expanded entitlement to time off may diminish an organization's ability to efficiently and effectively accomplish the mission of the agency.

OPM believes only a small number of employees would have a need and/or be able to use significant amounts of paid and unpaid leave to care for a family member with a serious health condition. Based on our experience with the current sick leave program, we believe less than 0.5 percent of the Federal workforce with 5 or more years of Federal service would actually use the maximum 12 weeks of sick leave. Federal employees accrue 13 days of sick leave each year. Although it is possible for an employee not to use any sick leave for 5 years so that he or she would accumulate 65 days (more than 12 weeks) of sick leave to use for family care purposes, this is highly unlikely. It is possible that an employee could be entitled to a maximum of 12 weeks of sick leave for family care and 12 weeks of unpaid leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. However, we believe it is highly unlikely that many employees would take more than 12 weeks off for family care purposes. In OPM's June 1997 ''Report to Congress on the Family Friendly Leave Act,'' we found that less than one-half of one percent of the Federal workforce used even the full 13 days of sick leave that was available for family care purposes at that time. In addition, the purpose for which the sick leave may be used—*i.e.,* a serious health condition—will limit the circumstances in which employees can use sick leave under the new policy. We believe this expanded entitlement will provide the greatest benefit to employees who would otherwise be forced to use leave

without pay under the FMLA to care for their family members. The expanded use of sick leave will permit these and other employees facing similar situations to maintain an income for part or all of the time they must be absent from work.

In addition, the expanded use of sick leave for family care purposes will provide many benefits. Agencies will retain valuable employees and benefit from reduced costs (including training costs) to replace employees forced to separate from Federal service because of family responsibilities. Employees will have greater incentive to conserve their sick leave, which will be available for future personal and family medical needs. There will be less need for employees to obtain donated leave through the voluntary leave transfer and leave bank programs, since a potential leave recipient faced with a family medical emergency will be required to use up to 12 weeks of his or her own sick leave before receiving any donated annual leave from other Federal employees.

Entitlement to Sick Leave

Two commenters questioned whether the granting of sick leave to care for a family member with a serious health condition would be done at the discretion of the agency. An employee is entitled to sick leave for family care, just as he or she is entitled to sick leave for his or her own incapacitation. If the employee complies with the agency's notification and medical evidence/certification requirements, the agency must grant sick leave.

The labor organization requested clarification of an employee's appeal rights if his or her request for sick leave is denied. If an employee believes he or she has been unjustly denied the use of sick leave for family care purposes, he or she may file a grievance under applicable agency administrative procedures or negotiated grievance procedures. Agency personnel offices can provide information to employees concerning the administration of the grievance procedures. In addition, OPM has authority to settle claims involving Federal employees' compensation and leave. OPM's regulations at 5 CFR part 178 provide procedures for filing written claims. However, 5 CFR 178.101(b) states that OPM's authority does not apply to claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements.

One commenter was concerned that part-time employees might not be included in this new initiative. However, the regulations make clear that both part-time employees and employees on uncommon tours of duty are entitled to pro-rated amounts of sick leave for family care purposes based on the number of hours in their regularly scheduled workweek. A Federal firefighter questioned whether leave accrual and use was truly proportional for employees on uncommon tours. Employees on uncommon tours earn and use leave in direct proportion to the leave-earning rate of a full-time employee who accrues and uses leave on the basis of an 80-hour biweekly tour of duty. An agency must charge one hour (or appropriate fraction thereof) of leave for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty.

Another individual questioned whether an employee is entitled to sick leave when ''caring'' for a family member who is hospitalized. OPM has always maintained that care of a family member includes psychological comfort as well as physical care, including being with the family member during a hospital stay or while being examined in a doctor's office. In response to this comment and frequent questions we have received on this subject, we are revising § 630.401 of the final regulations to make clear that an employee may use sick leave to attend to a family member who is receiving medical, dental, or optical examination or treatment. In addition, we have added a new paragraph (c) to § 630.403 to permit agencies to require a statement from an employee concerning a family member's need for psychological comfort and/or physical care. The statement from the health care provider must certify that (1) the family member requires psychological comfort and/or physical care, (2) the family member would benefit from the employee's care or presence, and (3) the employee is needed to care for the family member for a specified period of time.

Three commenters felt that 12 weeks was too long a time for employees to be away from their jobs. In contrast, one commenter felt that 12 weeks was not enough time and that an employee should be entitled to use all of his or her sick leave for family care purposes. We do not believe allowing employees to use more than 13 days of their own sick leave each year for family care purposes will greatly increase absenteeism. Many employees who must care for family members currently do so by using leave without pay under the FMLA. The final regulations will allow these employees to maintain an income and better balance their work and family responsibilities. We also believe the entitlement to use 12 weeks of sick leave to care for a family member with a serious health condition will meet the needs of most employees.

Definition of ''Family Member''

Several commenters were pleased that the regulations use the same definition of ''family member'' that is used in the current regulations on sick leave for family care purposes. However, some individuals requested that OPM be more specific as to who is covered by the phrase ''any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.'' Three commenters specifically questioned whether grandparents are covered by the definition, and another requested that stepchildren also be included. The intent of the regulation is to be family-friendly and to provide a benefit that goes beyond the traditional nuclear family. We believe a grandparent or a stepchild clearly is covered by the definition of ''family member.'' An agency is responsible for interpreting the definition to ensure that all employees are treated fairly and consistently.

Definition of ''Serious Health Condition''

Most individuals and agencies supported the use of the definition of ''serious health condition'' that is found in the FMLA regulations at § 630.1202. However, one agency expressed the belief that the term ''catastrophic illness'' implies a level of devastation to health and finances that would warrant the provisions included in the proposed regulations, while the term ''serious health condition'' does not. One commenter expressed appreciation for the regulations and hoped they would assist parents of ''special needs'' children in meeting their responsibilities. If the child's condition qualifies as a ''serious health condition'' under the definition at § 630.1202, a parent would be entitled to use sick leave on an intermittent basis to care for the child when other services are not available. However, this new entitlement does not permit an employee to use sick leave for routine childcare or to care for children with minor childhood ailments. The definition of ''serious health condition'' at § 630.1202 includes a list of what is *not* considered a serious health condition. An agency may require certification from a healthcare provider that the child has a qualifying medical condition before granting sick leave.

An individual urged OPM to include severe mental illness, including schizophrenia, bi-polar disorder (manic

depression), and other traumatic mental conditions requiring hospitalization or constant care as a ''serious health condition.'' The definition of ''serious health condition'' at § 630.1202 includes a ''mental condition'' that requires inpatient care or continuing treatment by a health care provider. All of the conditions enumerated by the commentor are covered by this definition.

Several commenters questioned whether childbirth and its recuperation would qualify as a ''serious health condition'' under § 630.1202. Some commenters interpreted the reference to pregnancy and childbirth in § 630.401(3)(i) to mean that the amount of sick leave that can be used to care for a family member during and after childbirth is limited to 13 days. An individual requested that we consider deleting the reference to childbirth at § 630.401(3)(i) and specifically include childbirth and recovery in the definition of ''serious health condition'' in § 630.1202. We agree that such a change would make clear that childbirth and recovery are considered serious health conditions, since they generally result in a period of incapacitation that exceeds 13 days. Therefore, we have removed the specific reference to pregnancy and childbirth from § 630.401(a)(3)(i). The final regulations provide that an agency must grant sick leave to an employee who provides care for a family member who is incapacitated by a medical or mental condition or who receives medical, dental, or optical examination or treatment. In addition, we have amended the definition of ''serious health condition'' in § 630.1202(1)(ii)(B) of the FMLA regulations to include childbirth as a serious health condition.

Commenters questioned how much sick leave a new mother would be able to use and whether family members such as her husband or parent would be entitled to use sick leave to care for her. A new mother will continue to be entitled to use sick leave for the period of incapacitation certified by the health care provider following the birth—generally about 6 weeks. Her husband or parent would be entitled to use sick leave to care for her during that entire period of incapacitation. In the case of both the new mother and her caregiver, the entitlement to use sick leave is limited to the period of incapacitation of the new mother. We encourage agencies to request documentation as to the period of incapacitation for any serious health condition.

Bonding With a Child

We received many comments from individuals who mistakenly believe new mothers and fathers will be able to use 12 weeks of sick leave following childbirth for bonding with the newborn child. Other commenters requested that OPM change the regulations to permit this. Care for a family member with a ''serious health condition'' does not include care for a healthy newborn child. Once the new mother's period of incapacitation ends, there is no further entitlement to use sick leave to ''care for a family member with a serious health condition.''

Both parents would continue to be entitled to use up to 13 days of sick leave each year to care for the child when he or she is ill or to take the child to medical appointments.

Two commenters objected that the regulations do not allow adoptive parents at least 6 weeks of sick leave for bonding purposes, pointing to the 6 weeks of sick leave that birth parents will be able to use. Adoptive parents may request sick leave for adoption-related purposes, including, but not limited to, appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. There is no limitation on the amount of sick leave that may be used for these purposes. Agencies may require employees to provide evidence that is administratively acceptable to the agency in support of a request for sick leave for adoption-related purposes. In addition, adoptive parents are entitled to use up to 13 days of sick leave each year to care for the child when he or she is ill or to take the child to medical appointments.

As stated above, sick leave is granted to birth parents only for the period of the mother's incapacitation. The birth parents must use annual leave and/or leave without pay for absences from work beyond the mother's period of incapacitation—*e.g.,* for care of the newborn, bonding with the child, and other child care responsibilities. There is no provision in law or regulation that permits the use of sick leave by birth parents or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child.

Interaction With Current Use of Sick Leave for Family Care Purposes

Several commenters asked how the new entitlement to 480 hours of sick leave to care for a family member with a serious health condition interacts with the current entitlement to use 13 days of sick leave each year for general family care and bereavement purposes. One agency urged OPM to consider making these two separate entitlements and permitting employees to use both 13 days of sick leave for general family care and bereavement purposes and 12 weeks (480 hours) of sick leave to care for a family member with a serious health condition each year. The agency felt this approach would simplify administration and reduce confusion about the two entitlements. The agency also felt that tracking sick leave in more than one category is burdensome to the manager and confusing to the employee. Similarly, an individual suggested that there be two entitlements, but that the use of sick leave to care for a family member with a serious health condition be limited to 10 weeks. Another agency recommended that OPM extend the amount of sick leave an employee may use for all family care purposes, instead of introducing a new entitlement.

The intent of the expanded sick leave regulations is to permit employees who are faced with caring for a family member with a serious health condition to use more than 13 days of sick leave. If an employee has previously used 13 days of sick leave in a leave year for family care purposes, the 13 days must be subtracted from the 12-week entitlement. If an employee has previously used 12 weeks of sick leave in a leave year to care for a family member with a serous health condition, he or she would not be entitled to an additional 13 days of sick leave for family care or bereavement purposes. We have revised § 630.401 to make clear that an employee is entitled to a maximum of 12 weeks of sick leave for all family care purposes.

Interaction With Family and Medical Leave

Several commenters questioned how the broadened use of sick leave for family care purposes would work with the use of leave without pay under the Family and Medical Leave Act (FMLA). One commenter expressed the belief that an employee already has an entitlement to use 12 weeks of sick leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. An individual was concerned that 12 weeks of sick leave for family care plus 12 weeks of leave without pay under the FMLA would result in an employee being absent from work for up to 6 months.

The FMLA provides most employees with an entitlement to use a total of up to 12 weeks of leave without pay during any 12-month period for certain family and medical needs. An employee may choose to substitute sick leave for FMLA leave without pay consistent with current law and regulations for using sick leave. (See § 630.1205(b)(1).) Until now, employees who invoked their entitlement to FMLA leave were limited to substituting up to 13 days of sick leave for FMLA leave without pay each year to care for a spouse, son or daughter, or parent with a serious health condition. Under the final regulations, an employee is entitled to substitute up to 12 weeks of sick leave each year for FMLA leave without pay if he or she is caring for a spouse, son or daughter, or parent with a serious health condition. Or, an employee may use up to 12 weeks of sick leave each year to care for a family member with a serious health condition and then invoke his or her entitlement to 12 weeks of FMLA leave without pay to care for his or her spouse, son or daughter, or parent with a serious health condition.

Another individual suggested that the regulations limit an employee to 12 weeks of sick leave in any 12-month period, similar to the requirements under the FMLA. However, the new entitlement is a broadening of the current regulations, not a change in the entitlements under the FMLA. Limiting the use of sick leave for family care by leave year is consistent with the current sick leave regulations and will provide for simpler administration of the current sick leave program.

Interaction With the Leave Transfer and Leave Bank Programs

One commenter asked how the expanded use of sick leave for family care will affect an employee's opportunity to receive donated annual leave from the agency's leave transfer and/or leave bank program. The commenter expressed the belief that an employee who has a substantial sick leave balance, but has used all the sick leave he or she is entitled to use for family care purposes, would be disqualified from the leave transfer program because he or she still had available paid sick leave. An employee may receive donated annual leave from other Federal employees if he or she is affected by a personal or family medical emergency and has exhausted his or her available paid annual and sick leave. Once an employee has exhausted his or her entitlement to 12 weeks of sick leave for family care purposes, the employee has exhausted all of his or her available paid sick leave.

We believe the expanded use of sick leave for family care purposes will reduce the need for obtaining donated annual leave through the leave transfer and leave bank programs. Currently, an employee who is caring for a family member with a medical emergency may have significant amounts of accumulated sick leave that he or she cannot use because the employee has already used his or her entitlement to 13 days of sick leave for family care purposes. As a result, such employees are using other employees' annual leave even though they have substantial amounts of sick leave available in their own sick leave accounts. We believe it makes sense to require employees to use their own annual and sick leave before receiving donated annual leave. In addition, we revised § 630.405(c) to require an employee who is using donated annual leave on the effective date of these regulations to use the sick leave available under § 630.401(a)(3) for family care purposes before he or she can continue to use donated annual leave.

Requirement To Maintain a Balance of 80 Hours of Sick Leave

Two commenters questioned the need to require employees to maintain an 80-hour sick leave balance when using more than 5 days of sick leave for any family care purpose. Another individual expressed the belief that the amount of sick leave that must be held in reserve should increase as the number of hours used for family care purposes increases—*e.g.,* for each 30-day increment above the basic 13-day entitlement, an employee should have to maintain an additional 20 hours of sick leave (above the 80-hour requirement).

The original intent of the 80-hour requirement was to ensure that Federal employees would have sufficient leave for their own medical needs at the end of a family member's medical emergency. With the possibility that an employee will be caring for a family member for an extended period, it is even more important that he or she have a reserve of sick leave for his or her own use to cover absences due to a personal illness. OPM believes 80 hours of sick leave is a sufficient reserve and that to require larger reserve balances from employees who seek to use greater amounts of sick leave for family care purposes would not be equitable.

A commenter was under the mistaken impression that an agency could advance sick leave if an employee's sick leave balance falls below the 80-hour threshold. Advancing more than the first 5 days (40 hours) of sick leave circumvents the intent of the regulation. We have had many questions about the 80-hour required balance and the restriction on the advance of more than 5 days of sick leave for family care purposes. We are taking this opportunity to revise § 630.401 to clarify the requirement for an 80-hour balance and the restriction on advancing sick leave for family care purposes.

Medical Certification

An agency recommended that the medical certification required by the FMLA to care for a spouse, son or daughter, or parent with a serious health condition also be required when an employee requests sick leave to care for a family member with a serious health condition. One individual urged that OPM write the regulations so that this entitlement cannot be used for anything less than a serious health condition. Another believes that requiring administratively acceptable evidence of a serious health condition or a doctor's confirmation will ensure that requests for sick leave are legitimate. A third commenter warns that unless medical certification is required, the expanded amounts of sick leave will be used for minor illnesses. Another asked OPM to make clear that an agency may request medical documentation as to the incapacitation of the family member, while another commenter felt that OPM should establish specific amounts of sick leave that may be used for specific types of serious health conditions. In contrast, however, one individual expressed the belief that ''administratively acceptable evidence'' is too broad a term and questioned who will determine what constitutes acceptable documentation. Another suggests that a doctor's statement should be required only after 5 days of absence from work and that a receipt for a doctor's visit should be sufficient medical documentation.

We urge each agency to request medical certification to document that a serious health condition exists. In addition, obtaining medical documentation will ensure that the appropriate amount of sick leave is granted. We do not believe Governmentwide guidelines can be established assigning specified amounts of sick leave for certain health conditions. Individual circumstances differ, and individuals will require varying amounts of time off for treatment and recuperation. A certification from the health care provider will determine the length of the incapacitation for each individual and, therefore, the duration of the serious health condition. Agencies may

wish to modify the Department of Labor's Family and Medical Leave medical certification form to document the existence and probable duration of a serious health condition, or they may wish to establish their own medical certification form. Each agency has the authority to determine what constitutes ''administratively acceptable evidence'' for any use of sick leave and to request such documentation whenever it feels necessary.

One agency approved of OPM's proposal to permit agencies to limit the amount of time given to an employee to produce acceptable documentation, feeling it would help to ensure that the new entitlement is used only as intended. We agree and are adopting as final the revisions at § 630.403(b). We believe agencies should establish time limits for employees to provide required documentation of a medical or mental condition. This will ensure that sick leave is being used properly and will guarantee that all employees receive equal treatment.

Reporting Requirements

Two individuals questioned what new reporting requirements might be involved in the administration of this new entitlement. One agency recommended that OPM require agencies to report back in 1 year on the extent to which the new sick leave provisions are being used. When OPM published the original regulations on sick leave for family care purposes in December 1994, we added § 630.408 to require agencies to maintain records to provide data to us on the use of sick leave for family care purposes. We requested the data for OPM's June 1997 ''Report to Congress on the 'Federal Employees Family Friendly Leave Act,' Public Law 103–388.'' We no longer believe the reporting requirements are necessary and plan to propose removal of them from the regulations later this year. Nevertheless, our regulations continue to require that agencies maintain internal records on the amount of sick leave used each leave year for family care or bereavement purposes to ensure that employees do not exceed the limitations in 5 CFR 630.401(b) and (c).

Additional Use of Sick Leave

Three individuals suggested that OPM establish programs to pay employees for unused sick leave. They felt this would encourage employees to conserve their sick leave, particularly in the case of employees covered by the Federal Employees Retirement System (FERS), since they do not receive credit at retirement for unused sick leave. This proposal would require legislative action. In addition, OPM believes the ability to use up to 12 weeks of sick leave for family care purposes will be an additional incentive for employees to conserve their sick leave for future needs. Since the Government has no short-term disability insurance program, it is important that employees conserve sick leave to cover their own periods of illness, as well as their family care needs.

An individual suggested broadening the leave transfer program to allow employees to donate their unused sick leave to other employees. Section 6334(a) of title 5, United States Code, permits Federal employees to donate or contribute annual leave, but not sick leave, to another employee who has a personal or family medical emergency. Therefore, this proposal would require legislative action. In addition, the ability of employees to use larger amounts of sick leave for family care purposes should ease the demand for donated leave, making greater amounts of donated annual leave available to those employees who have exhausted other available paid leave.

Other Comments

A commenter expressed concern that agencies would look upon employees who use large amounts of sick leave to care for a family member as ''leave abusers.'' We believe agencies are aware that the use of approved sick leave is not leave abuse and is not a basis for an adverse action. An agency may request medical certification for the use of sick leave, but if proper certification is provided, the leave must be approved.

Another commenter argued that the availability of 12 weeks of paid leave for Federal employees will place the entire burden of family care on the shoulders of Federal employees. The commenter felt the Government should pressure private industry to expand its family leave policies to relieve the burden on Federal employees who are caretakers. OPM hopes this program will become a model for non-Federal employers by demonstrating ways to help employees balance their work and family responsibilities.

A number of agencies and individuals requested that OPM publish a table or matrix of leave programs that provides a basic overview of when and under what circumstances employees are entitled to leave under each of the various leave programs. The labor organization recommended that a special effort be made to provide training and resources to help agency personnel offices answer managers' and employees' questions concerning these regulations and their interactions with various family-friendly leave programs in the Government. OPM currently offers leave workshops to assist agencies and employees in understanding and administering the Government's family-friendly leave programs. Dates for future workshops are available on OPM's website at *www.opm.gov·* In addition, we have developed, and will continue to develop, fact sheets and matrix tables on the various Federal leave programs. These materials are available on OPM's website at *www.opm.gov*^{loca}*leave.* In the near future, we will issue additional guidance and a series of examples on how to apply the different leave provisions.

Two commenters thought the Government should grant new mothers paid maternity leave in addition to their accrued sick leave. They pointed to companies in the private sector that offer this type of paid leave benefit. Many private sector companies provide employees with a limited amount of sick leave each year (which may or may not accumulate for use in succeeding years) and short-term disability insurance that may be used for maternity purposes. Generally, short-term disability insurance programs replace only a portion—typically 60 to 70 percent—of an employee's income while disabled and provide coverage for a maximum of 6 months. Like some of the other ideas raised by other commenters, legislative action would be required to establish such a program. We believe the Government's generous sick leave and annual leave system, in conjunction with advanced sick and annual leave, the leave transfer and leave bank programs, flexible work schedules, flexiplace, unpaid leave under the Family and Medical Leave Act of 1993, and compensatory time off enable the vast majority of Federal employees to meet their personal and family medical needs.

One agency commented that the leave provisions alone are confusing in themselves and that the variations and interworkings of these programs have become even more complicated and cumbersome. Several agencies recommended that OPM take the initiative to review Federal leave programs and combine and streamline where possible, including pursuing legislative change if necessary. In an effort to provide agencies with more flexibility in the way employees are compensated and to simplify compensation administration, OPM has embarked on a strategic compensation initiative. The goal of the initiative is to develop legislation to improve the Federal compensation system. This initiative will include recommendations

for improving and simplifying paid time off programs.

Effective Date of Regulations

Three commenters requested that OPM make the final regulations effective retroactively—on the date of President Clinton's memorandum (May 24, 1999), at the beginning of this fiscal year (October 1, 1999), or at the beginning of this calendar year (January 1, 2000). The labor organization recommended that every effort be made to ensure the changes are implemented immediately, since employees continue to suffer under the current limitation of 13 days of sick leave each year for family care purposes. However, an agency requested delaying the effective date of the final regulations to permit additional time for reprogramming its payroll and accounting system to accommodate the expanded use of sick leave for family care purposes.

Because the implementation of a new sick leave policy requires changes in OPM's Governmentwide sick leave regulations, we must follow the procedural requirements of the Administrative Procedure Act (APA). The APA generally calls for a 30-day delay in the effective date of any regulatory change following the publication of final regulations. The issuance of retroactive regulations is neither the preferred nor usual method for rulemaking. Retroactivity in rulemaking is permissible where Congress has expressly authorized it in law, but that is not the case here. To enable employees to use this expanded benefit immediately, we are modifying the requirement to delay the effective date of the final regulations so that they can become effective 7 days after the date of publication in the **Federal Register**.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. We continue to receive inquiries from employees, agency officials, and other interested parties who are experiencing a family medical emergency and need additional paid time off. To accommodate the pressing need for this benefit, we are making these regulations effective 7 days after the date of publication.

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 affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Family Assessment Certification

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201(b), a new definition of *serious health condition* is added in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

Serious health condition has the meaning given that term in § 630.1202.

* * * * *

Subpart D—Sick Leave

3. In § 630.401, the introductory text of paragraph (a) and paragraphs (a)(3) and (b) are revised; paragraphs (c) through (e) are redesignated as paragraphs (e) through (g), respectively; in newly redesignated paragraph (f), ''(c)'' is removed and ''(d)'' is added in its place wherever it appears; and new paragraphs (c) and (d) are added to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (f) of this section, an agency must grant sick leave to an employee when the employee—

* * * * *

(3)(i) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition.

* * * * *

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who is caring for a family member with a serious health condition under paragraph (a)(3)(ii) of this section may use not more than a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) during a leave year, subject to the limitation found in paragraph (c)(2) of this section.

(2) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c)(1) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be used during the remainder of the leave year to care for a family member with a serious health condition. If the employee previously has used the maximum amount of sick leave permitted under paragraph (c)(1) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b).

(3) A full-time employee may use not more than a total of 480 hours of sick

leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) for all family care purposes under paragraphs (a)(3) and (4) of this section.

(d) For family care purposes as described in paragraphs (a)(3) and (4) of this section—

(1) A full-time employee may use a total of up to 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in his or her regularly scheduled administrative workweek) of accrued and accumulated sick leave without further regard to his or her sick leave balance.

(2) A full-time employee may use more than 40 hours of his or her accrued and accumulated sick leave up to the maximum provided by paragraphs (b) and (c)(1) of this section only if he or she maintains a sick leave balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, two times the average number of hours in his or her regularly scheduled administrative workweek). An employee must maintain this balance during any period of time during which the employee is using more than his or her basic entitlement to sick leave under paragraph (d)(1) of this section.

(3) An agency may advance only the initial 40 hours of sick leave under paragraph (d)(1) of this section, or a proportional amount for an employee with a part-time or uncommon tour of duty. An agency may not advance sick leave for the purpose of meeting the requirement to retain a minimum sick leave balance under paragraph (d)(2) of this section or, if the employee has the required minimum sick leave balance, for using additional sick leave as provided in paragraphs (b) and (c) of this section.

* * * * *

4. Section § 630.403 is revised to read as follows:

§ 630.403 Supporting Evidence.

(a) An agency may grant sick leave only when supported by administratively acceptable evidence. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as administratively acceptable evidence. For an absence in excess of 3 workdays, or for a lesser period when determined necessary, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a).

(b) An agency may establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

(c) An agency may require an employee requesting sick leave to care for a family member under § 630.401(a)(3)(ii) to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that—

(1) The family member requires psychological comfort and/or physical care;

(2) The family member would benefit from the employee's care or presence; and

(3) The employee is needed to care for the family member for a specified period of time.

§ 630.405 Use of sick leave during annual leave or to become eligible for donated leave.

5. In § 630.405, paragraph (a) is amended by removing ''(e)'' and adding in its place ''(f),'' by removing the last sentence in paragraph (b), and by revising paragraph (c) to read as follows:

* * * * *

(c) In the case of an employee already in a shared leave status (*i.e.,* using donated annual leave) on June 20, 2000 under the voluntary leave transfer or leave bank programs established under subchapters III and IV of chapter 63 of title 5, United States Code, any sick leave available to care for a family member under § 630.401 must be used before continuing to use transferred annual leave or annual leave withdrawn from a leave bank.

Subpart L—Family and Medical Leave

§ 630.1202 Definitions.

6. In § 630.1202, paragraph (1)(ii)(B) of the definition of *serious health condition is* revised to read as follows:

* * * * *

Serious health condition. (1) * * *

(ii) * * *

(B) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

* * * * *

[FR Doc. 00–14857 Filed 6–12–00; 8:45 am]

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Federal Register

Tuesday,
June 13, 2000

Part V

The President

Proclamation 7317—Establishment of the Canyons of the Ancients National Monument

Proclamation 7318—Establishment of the Cascade-Siskiyou National Monument

Proclamation 7319—Establishment of the Hanford Reach National Monument

Proclamation 7320—Establishment of the Ironwood Forest National Monument

Federal Register
Vol. 65, No. 114
Tuesday, June 13, 2000

Presidential Documents

Title 3—

The President

Proclamation 7317 of June 9, 2000

Establishment of the Canyons of the Ancients National Monument

By the President of the United States of America

A Proclamation

Containing the highest known density of archaeological sites in the Nation, the Canyons of the Ancients National Monument holds evidence of cultures and traditions spanning thousands of years. This area, with its intertwined natural and cultural resources, is a rugged landscape, a quality that greatly contributes to the protection of its scientific and historic objects. The monument offers an unparalleled opportunity to observe, study, and experience how cultures lived and adapted over time in the American Southwest.

The complex landscape and remarkable cultural resources of the Canyons of the Ancients National Monument have been a focal point for archaeological interest for over 125 years. Archaeological and historic objects such as cliff dwellings, villages, great kivas, shrines, sacred springs, agricultural fields, check dams, reservoirs, rock art sites, and sweat lodges are spread across the landscape. More than five thousand of these archaeologically important sites have been recorded, and thousands more await documentation and study. The Mockingbird Mesa area has over forty sites per square mile, and several canyons in that area hold more than three hundred sites per square mile.

People have lived and labored to survive among these canyons and mesas for thousands of years, from the earliest known hunters crossing the area 10,000 years ago or more, through Ancestral Puebloan farmers, to the Ute, Navajo, and European settlers whose descendants still call this area home. There is scattered evidence that Paleo-Indians used the region on a sporadic basis for hunting and gathering until around 7500 B.C. During the Archaic period, generally covering the next six thousand years, occupation of the Four Corners area was dominated by hunters and gatherers.

By about 1500 B.C., the more sedentary Basketmakers spread over the landscape. As Ancestral Northern Puebloan people occupied the area around 750 A.D., farming began to blossom, and continued through about 1300 A.D., as the area became part of a much larger prehistoric cultural region that included Mesa Verde to the southeast. Year-round villages were established, originally consisting of pit house dwellings, and later evolving to well-recognized cliff-dwellings. Many archaeologists now believe that throughout this time span, the Ancestral Northern Puebloan people periodically aggregated into larger communities and dispersed into smaller community units. Specifically, during Pueblo I (about 700–900 A.D.) the occupation and site density in the monument area increased. Dwellings tended to be small, with three or four rooms. Then, during Pueblo II (about 900–1150 A.D.), settlements were diminished and highly dispersed. Late in Pueblo II and in early Pueblo III, around 1150 A.D., the size and number of settlements again increased and residential clustering began. Later pueblos were larger multi-storied masonry dwellings with forty to fifty rooms. For the remainder of Pueblo III (1150–1300 A.D.), major aggregation occurred in the monument, typically at large sites at the heads of canyons. One of these sites includes remains of about 420 rooms, 90 kivas, a great kiva, and a plaza, covering more than ten acres in all. These villages were wrapped

around the upper reaches of canyons and spread down onto talus slopes, enclosed year-round springs and reservoirs, and included low, defensive walls. The changes in architecture and site planning reflected a shift from independent households to a more communal lifestyle.

Farming during the Puebloan period was affected by population growth and changing climate and precipitation patterns. As the population grew, the Ancestral Puebloans expanded into increasingly marginal areas. Natural resources were compromised and poor soil and growing conditions made survival increasingly difficult. When dry conditions persisted, Pueblo communities moved to the south, southwest, and southeast, where descendants of these Ancestral Puebloan peoples live today.

Soon after the Ancestral Puebloans left the monument area, the nomadic Ute and Navajo took advantage of the natural diversity found in the variable topography by moving to lower areas, including the monument's mesas and canyons, during the cooler seasons. A small number of forked stick hogans, brush shelters, and wickiups are the most obvious remnants of this period of occupation.

The natural resources and spectacular land forms of the monument help explain why past and present cultures have chosen to live in the area. The geology of the monument evokes the very essence of the American Southwest. Structurally part of the Paradox Basin, from a distance the landscape looks deceptively benign. From the McElmo Dome in the southern part of the monument, the land slopes gently to the north, giving no indication of its true character. Once inside the area, however, the geology becomes more rugged and dissected. Rising sharply to the north of McElmo Creek, the McElmo Dome itself is buttressed by sheer sandstone cliffs, with mesa tops rimmed by caprock, and deeply incised canyons.

The monument is home to a wide variety of wildlife species, including unique herpetological resources. Crucial habitat for the Mesa Verde nightsnake, long-nosed leopard lizard, and twin-spotted spiny lizard can be found within the monument in the area north of Yellow Jacket Canyon. Peregrine falcons have been observed in the area, as have golden eagles, American kestrels, red-tailed hawks, and northern harriers. Game birds like Gambel's quail and mourning dove are found throughout the monument both in dry, upland habitats, and in lush riparian habitat along the canyon bottoms.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Canyons of the Ancients National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Canyons of the Ancients National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Canyons of the Ancients National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 164,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral leasing, other than by exchange that furthers the protective purposes of the monument, and except for oil and gas leasing as prescribed herein.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

Because most of the Federal lands have already been leased for oil and gas, which includes carbon dioxide, and development is already occurring, the monument shall remain open to oil and gas leasing and development; provided, the Secretary of the Interior shall manage the development, subject to valid existing rights, so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation; and provided further, the Secretary may issue new leases only for the purpose of promoting conservation of oil and gas resources in any common reservoir now being produced under existing leases, or to protect against drainage.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Colorado with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Bureau of Land Management shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

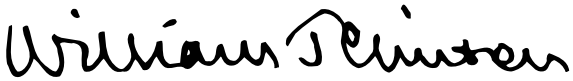
Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to affect the management of Hovenweep National Monument by the National Park Service (Proclamation 1654 of March 2, 1923, Proclamation 2924 of May 1, 1951, and Proclamation 2998 of November 26, 1952).

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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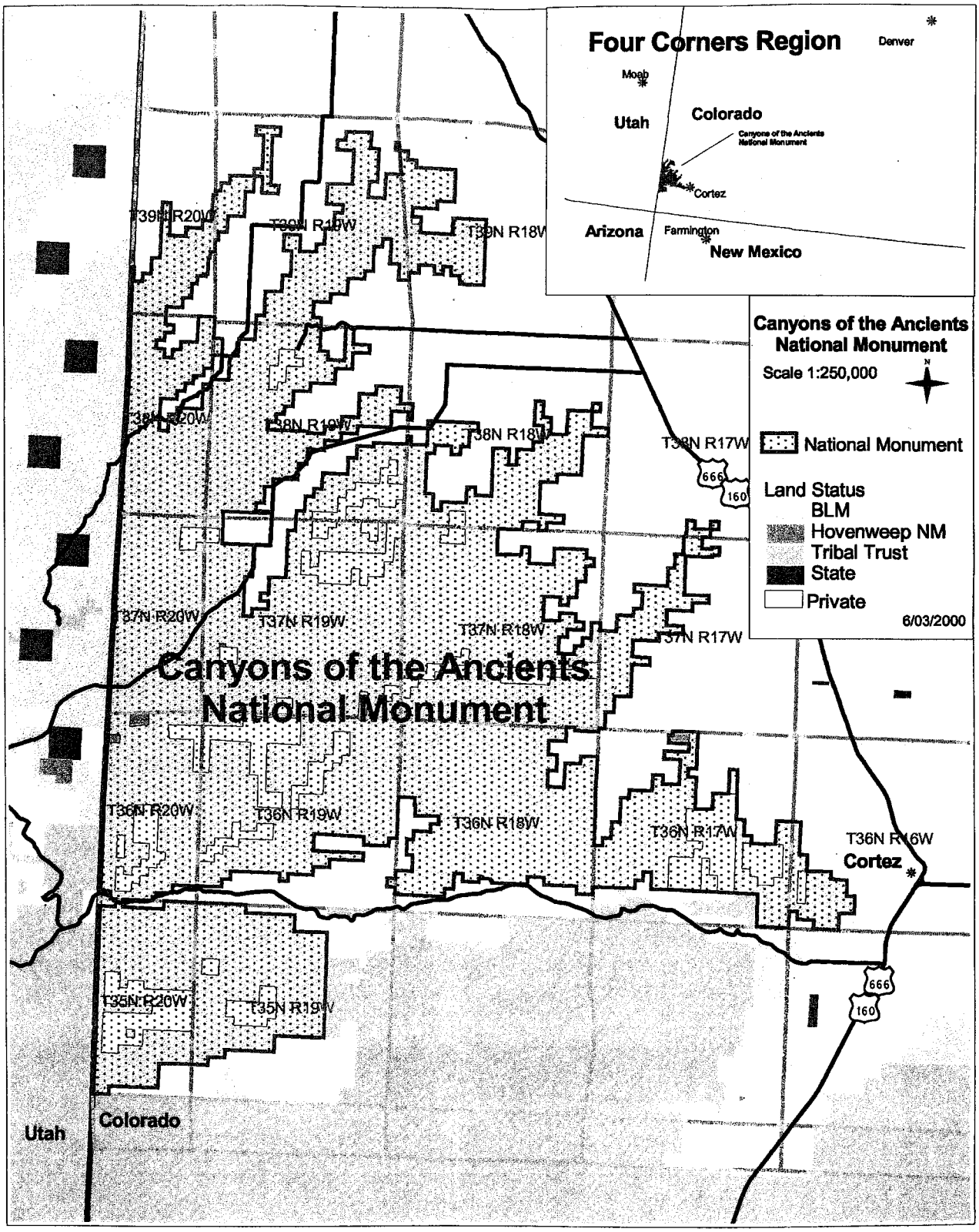

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Presidential Documents

Proclamation 7318 of June 9, 2000

Establishment of the Cascade-Siskiyou National Monument

By the President of the United States of America

A Proclamation

With towering fir forests, sunlit oak groves, wildflower-strewn meadows, and steep canyons, the Cascade-Siskiyou National Monument is an ecological wonder, with biological diversity unmatched in the Cascade Range. This rich enclave of natural resources is a biological crossroads—the interface of the Cascade, Klamath, and Siskiyou ecoregions, in an area of unique geology, biology, climate, and topography.

The monument is home to a spectacular variety of rare and beautiful species of plants and animals, whose survival in this region depends upon its continued ecological integrity. Plant communities present a rich mosaic of grass and shrublands, Garry and California black oak woodlands, juniper scablands, mixed conifer and white fir forests, and wet meadows. Stream bottoms support broad-leaf deciduous riparian trees and shrubs. Special plant communities include rosaceous chaparral and oak-juniper woodlands. The monument also contains many rare and endemic plants, such as Greene's Mariposa lily, Gentner's fritillary, and Bellinger's meadowfoam.

The monument supports an exceptional range of fauna, including one of the highest diversities of butterfly species in the United States. The Jenny Creek portion of the monument is a significant center of fresh water snail diversity, and is home to three endemic fish species, including a long-isolated stock of redband trout. The monument contains important populations of small mammals, reptile and amphibian species, and ungulates, including important winter habitat for deer. It also contains old growth habitat crucial to the threatened Northern spotted owl and numerous other bird species such as the western bluebird, the western meadowlark, the pileated woodpecker, the flammulated owl, and the pygmy nuthatch.

The monument's geology contributes substantially to its spectacular biological diversity. The majority of the monument is within the Cascade Mountain Range. The western edge of the monument lies within the older Klamath Mountain geologic province. The dynamic plate tectonics of the area, and the mixing of igneous, metamorphic, and sedimentary geological formations, have resulted in diverse lithologies and soils. Along with periods of geological isolation and a range of environmental conditions, the complex geologic history of the area has been instrumental in producing the diverse vegetative and biological richness seen today.

One of the most striking features of the Western Cascades in this area is Pilot Rock, located near the southern boundary of the monument. The rock is a volcanic plug, a remnant of a feeder vent left after a volcano eroded away, leaving an outstanding example of the inside of a volcano. Pilot Rock has sheer, vertical basalt faces up to 400 feet above the talus slope at its base, with classic columnar jointing created by the cooling of its andesite composition.

The Siskiyou Pass in the southwest corner of the monument contains portions of the Oregon/California Trail, the region's main north/south travel route first established by Native Americans in prehistoric times, and used by Peter Skene Ogden in his 1827 exploration for the Hudson's Bay Company.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Cascade-Siskiyou National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Cascade-Siskiyou National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Cascade-Siskiyou National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 52,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

The commercial harvest of timber or other vegetative material is prohibited, except when part of an authorized science-based ecological restoration project aimed at meeting protection and old growth enhancement objectives. Any such project must be consistent with the purposes of this proclamation. No portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber. Removal of trees from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road and shall close the Schoheim Road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities (including, where applicable, the Act of August 28, 1937, as amended (43 U.S.C. 1181a-1181j)), to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as he deems appropriate. The management plan shall

include appropriate transportation planning that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The Secretary of the Interior shall study the impacts of livestock grazing on the objects of biological interest in the monument with specific attention to sustaining the natural ecosystem dynamics. Existing authorized permits or leases may continue with appropriate terms and conditions under existing laws and regulations. Should grazing be found incompatible with protecting the objects of biological interest, the Secretary shall retire the grazing allotments pursuant to the processes of applicable law. Should grazing permits or leases be relinquished by existing holders, the Secretary shall not reallocate the forage available under such permits or for livestock grazing purposes unless the Secretary specifically finds, pending the outcome of the study, that such reallocation will advance the purposes of the proclamation.

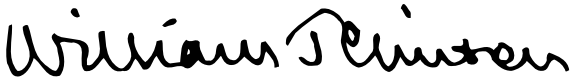
The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Oregon with respect to fish and wildlife management.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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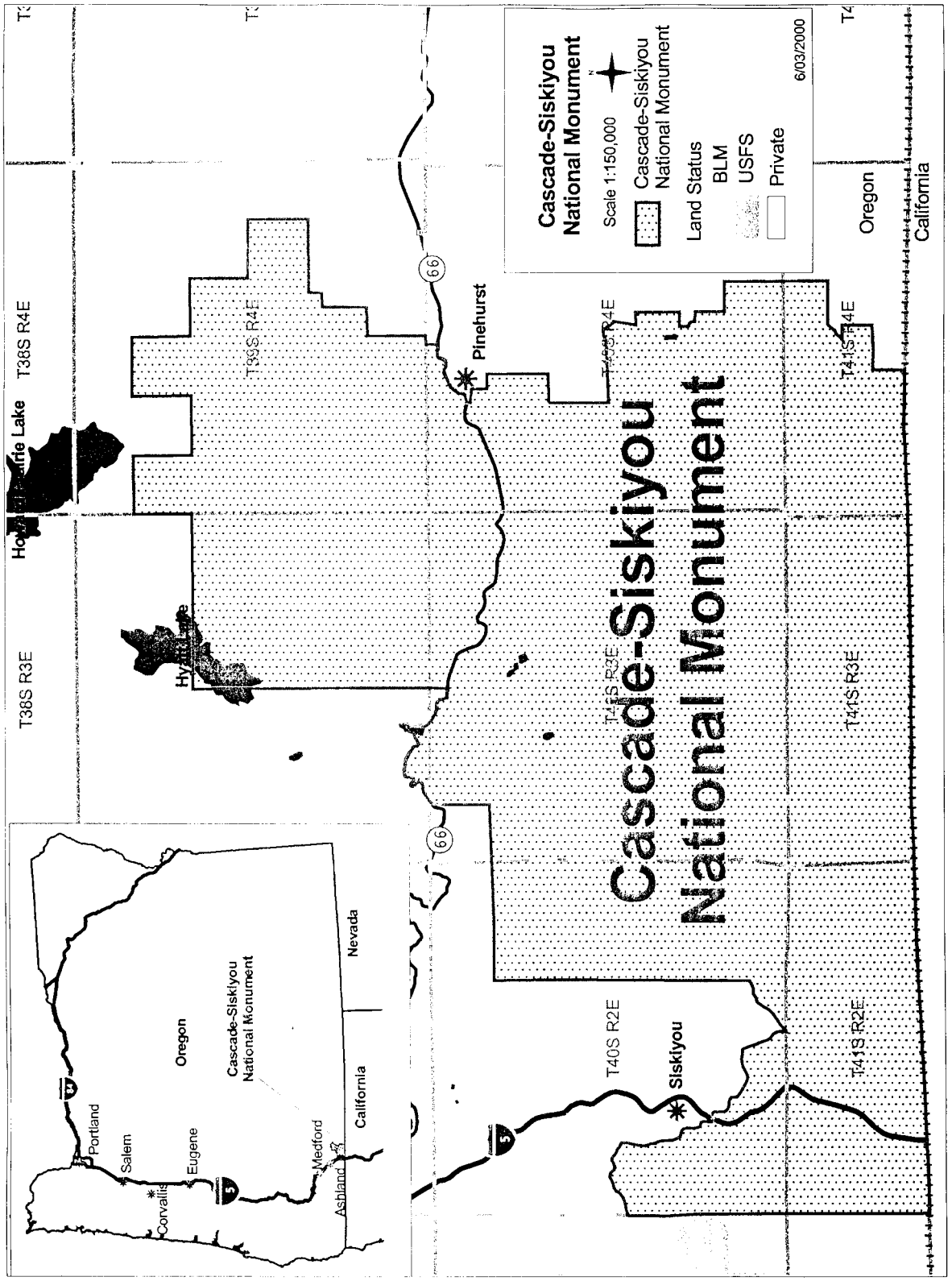


[FR Doc. 00–15110

Filed 6–12–00; 10:47 am]

Billing code 3195–01–C

Presidential Documents

Proclamation 7319 of June 9, 2000

Establishment of the Hanford Reach National Monument

By the President of the United States of America

A Proclamation

The Hanford Reach National Monument is a unique and biologically diverse landscape, encompassing an array of scientific and historic objects. This magnificent area contains an irreplaceable natural and historic legacy, preserved by unusual circumstances. Maintained as a buffer area in a Federal reservation conducting nuclear weapons development and, more recently, environmental cleanup activities, with limits on development and human use for the past 50 years, the monument is now a haven for important and increasingly scarce objects of scientific and historic interest. Bisected by the stunning Hanford Reach of the Columbia River, the monument contains the largest remnant of the shrub-steppe ecosystem that once blanketed the Columbia River Basin. The monument is also one of the few remaining archaeologically rich areas in the western Columbia Plateau, containing well-preserved remnants of human history spanning more than 10,000 years. The monument is equally rich in geologic history, with dramatic landscapes that reveal the creative forces of tectonic, volcanic, and erosive power.

The monument is a biological treasure, embracing important riparian, aquatic, and upland shrub-steppe habitats that are rare or in decline in other areas. Within its mosaic of habitats, the monument supports a wealth of increasingly uncommon native plant and animal species, the size and diversity of which is unmatched in the Columbia Basin. Migrating salmon, birds, and hundreds of other native plant and animal species rely on its natural ecosystems.

The monument includes the 51-mile long ''Hanford Reach,'' the last free-flowing, nontidal stretch of the Columbia River. The Reach contains islands, riffles, gravel bars, oxbow ponds, and backwater sloughs that support some of the most productive spawning areas in the Northwest, where approximately 80 percent of the upper Columbia Basin's fall chinook salmon spawn. It also supports healthy runs of naturally-spawning sturgeon and other highly-valued fish species. The loss of other spawning grounds on the Columbia and its tributaries has increased the importance of the Hanford Reach for fisheries.

The monument contains one of the last remaining large blocks of shrub-steppe ecosystems in the Columbia River Basin, supporting an unusually high diversity of native plant and animal species. A large number of rare and sensitive plant species are found dispersed throughout the monument. A recent inventory resulted in the discovery of two plant species new to science, the Umtanum desert buckwheat and the White Bluffs bladderpod. Fragile microbiotic crusts, themselves of biological interest, are well developed in the monument and play an important role in stabilizing soils and providing nutrients to plants.

The monument contains significant breeding populations of nearly all steppe and shrub-steppe dependent birds, including the loggerhead shrike, the sage sparrow, the sage thrasher, and the ferruginous hawk. The Hanford Reach and surrounding wetlands provide important stop-over habitat for migratory birds, as well as habitat for many resident species. The area is important wintering habitat for bald eagles, white pelicans, and many species of waterfowl such as mallards, green-winged teal, pintails, goldeneye, gadwall, and

buffleheads. The monument's bluff habitats provide valuable nesting sites for several bird species, including prairie falcons, and important perch sites for raptors such as peregrine falcons.

Many species of mammals are also found within the monument, including elk, beaver, badgers, and bobcats. Insect populations, though less conspicuous, include species that have been lost elsewhere due to habitat conversion, fragmentation, and application of pesticides. A recent biological inventory uncovered 41 species and 2 subspecies of insects new to science and many species not before identified in the State of Washington. Such rich and diverse insect populations are important to supporting the fauna in the monument.

In addition to its vital biological resources, the monument contains significant geological and paleontological objects. The late-Miocene to late-Pliocene Ringold Formation, known as the White Bluffs, was formed from river and lake sediments deposited by the ancestral Columbia River and its tributaries. These striking cliffs form the eastern bank of the Columbia for nearly half of the length of the Reach, and are significant for the mammalian fossils that they contain. Fossil remains from rhinoceros, camel, and mastodon, among others, have been found within these bluffs.

The Hanford Dune Field, located on the western shore of the Columbia in the southeastern part of the monument, is also of geologic significance. This active area of migrating barchan dunes and partially stabilized transverse dunes rises 10 to 16 feet above the ground, creating sandy habitats ranging from 2 to several hundred acres in size.

The monument also contains important archaeological and historic information. More than 10,000 years of human activity in this largely arid environment have left extensive archaeological deposits. Areas upland from the river show evidence of concentrated human activity, and recent surveys indicate extensive use of arid lowlands for hunting. Hundreds of prehistoric archaeological sites have been recorded, including the remains of pithouses, graves, spirit quest monuments, hunting camps, game drive complexes, quarries, and hunting and kill sites. A number of Native American groups still have cultural ties to the monument. The monument also contains some historic structures and other remains from more recent human activities, including homesteads from small towns established along the riverbanks in the early 20th century.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Hanford Reach National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Hanford Reach National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Hanford Reach National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 195,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

For the purpose of protecting the objects identified above, the Secretary of the Interior and the Secretary of Energy shall prohibit all motorized and mechanized vehicle use off road, except for emergency or other federally authorized purposes, including remediation purposes. There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water in the Columbia River sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit livestock grazing.

The monument shall be managed by the U.S. Fish and Wildlife Service under existing agreements with the Department of Energy, except that the Department of Energy shall manage the lands within the monument that are not subject to management agreements with the Service, and in developing any management plans and rules and regulations governing the portions of the monument for which the Department of Energy has management responsibility, the Secretary of Energy shall consult with the Secretary of the Interior.

As the Department of Energy and the U.S. Fish and Wildlife Service determine that lands within the monument managed by the Department of Energy become suitable for management by the U.S. Fish and Wildlife Service, the U.S. Fish and Wildlife Service will assume management by agreement with the Department of Energy. All agreements between the U.S. Fish and Wildlife Service and the Department of Energy shall be consistent with the provisions of this proclamation.

Nothing in this proclamation shall affect the responsibility of the Department of Energy under environmental laws, including the remediation of hazardous substances or the restoration of natural resources at the Hanford facility; nor affect the Department of Energy's statutory authority to control public access or statutory responsibility to take other measures for environmental remediation, monitoring, security, safety, or emergency preparedness purposes; nor affect any Department of Energy activities on lands not included within the monument.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Washington with respect to fish and wildlife management.

Nothing in this proclamation shall enlarge or diminish the rights of any Indian tribe.

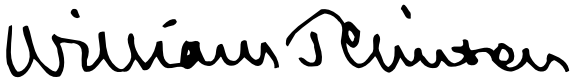
The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall interfere with the operation and maintenance of existing facilities of the Columbia Basin Reclamation Project, the Federal Columbia River Transmission System, or other existing utility services that are located within the monument. Existing Federal Columbia River Transmission System facilities located within the monument may be replaced, modified and expanded, and new facilities constructed within the monument, as authorized by other applicable law. Such replacement, modification, expansion, or construction of new facilities shall be carried out in a manner consistent with proper care and management of the objects of this proclamation, to be determined in accordance with the management arrangements previously set out in this proclamation.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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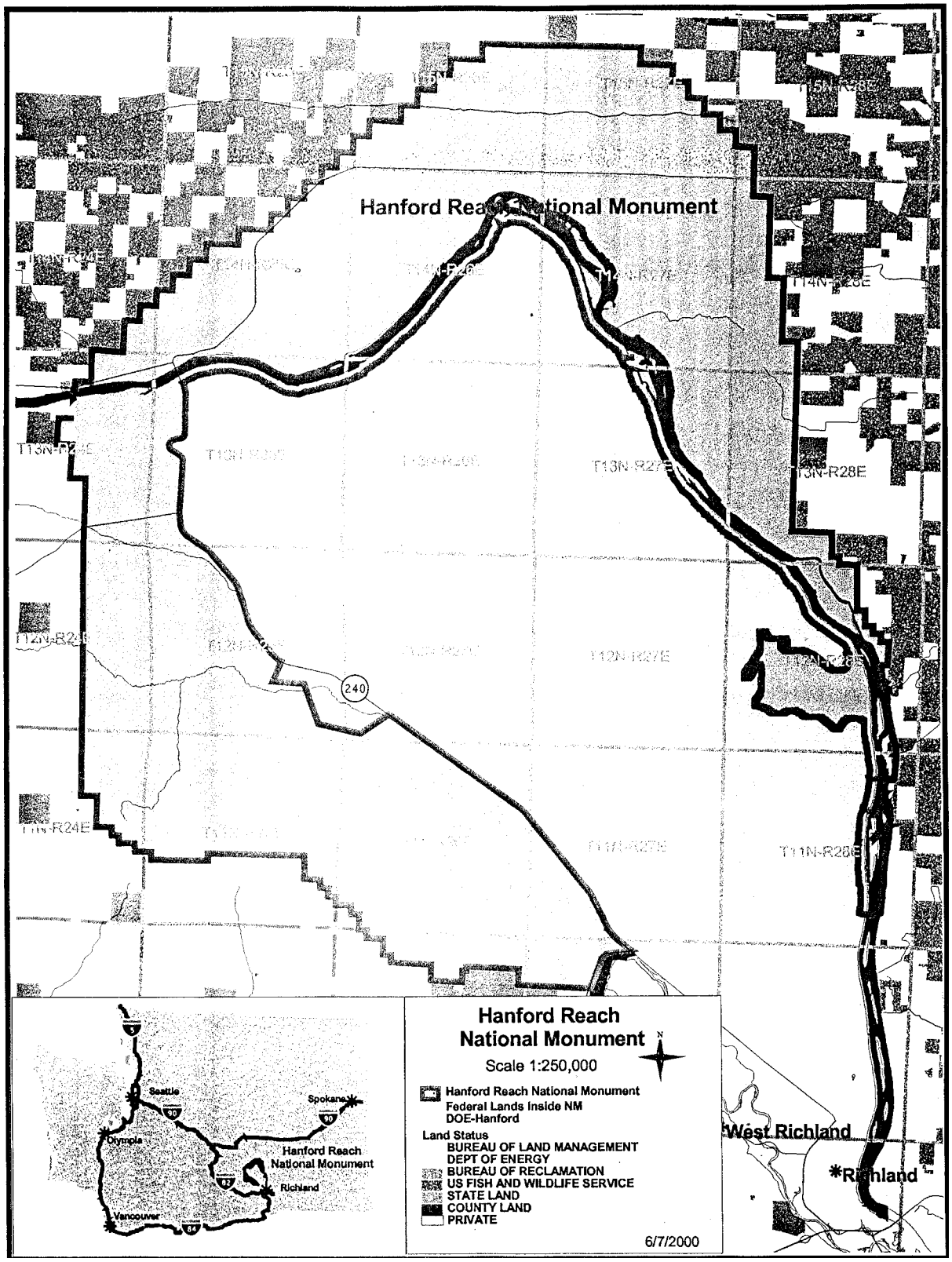

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Presidential Documents

Proclamation 7320 of June 9, 2000

Establishment of the Ironwood Forest National Monument

By the President of the United States of America

A Proclamation

The landscape of the Ironwood Forest National Monument is swathed with the rich, drought-adapted vegetation of the Sonoran Desert. The monument contains objects of scientific interest throughout its desert environment. Stands of ironwood, palo verde, and saguaro blanket the monument floor beneath the rugged mountain ranges, including the Silver Bell Mountains. Ragged Top Mountain is a biological and geological crown jewel amid the depositional plains in the monument.

The monument presents a quintessential view of the Sonoran Desert with ancient legume and cactus forests. The geologic and topographic variability of the monument contributes to the area's high biological diversity. Ironwoods, which can live in excess of 800 years, generate a chain of influences on associated understory plants, affecting their dispersal, germination, establishment, and rates of growth. Ironwood is the dominant nurse plant in this region, and the Silver Bell Mountains support the highest density of ironwood trees recorded in the Sonoran Desert. Ironwood trees provide, among other things, roosting sites for hawks and owls, forage for desert bighorn sheep, protection for saguaro against freezing, burrows for tortoises, flowers for native bees, dense canopy for nesting of white-winged doves and other birds, and protection against sunburn for night blooming cereus.

The ironwood-bursage habitat in the Silver Bell Mountains is associated with more than 674 species, including 64 mammalian and 57 bird species. Within the Sonoran Desert, Ragged Top Mountain contains the greatest richness of species. The monument is home to species federally listed as threatened or endangered, including the Nichols turk's head cactus and the lesser long-nosed bat, and contains historic and potential habitat for the cactus ferruginous pygmy-owl. The desert bighorn sheep in the monument may be the last viable population indigenous to the Tucson basin.

In addition to the biological and geological resources, the area holds abundant rock art sites and other archeological objects of scientific interest. Humans have inhabited the area for more than 5,000 years. More than 200 sites from the prehistoric Hohokam period (600 A.D. to 1450 A.D.) have been recorded in the area. Two areas within the monument have been listed on the National Register of Historic Places, the Los Robles Archeological District and the Cocoraque Butte Archeological District. The archeological artifacts include rhyolite and brown chert chipped stone, plain and decorated ceramics, and worked shell from the Gulf of California. The area also contains the remnants of the Mission Santa Ana, the last mission constructed in Pimeria Alta.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all

cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Ironwood Forest National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Ironwood Forest National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Ironwood Forest National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 128,917 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Arizona with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Bureau of Land Management shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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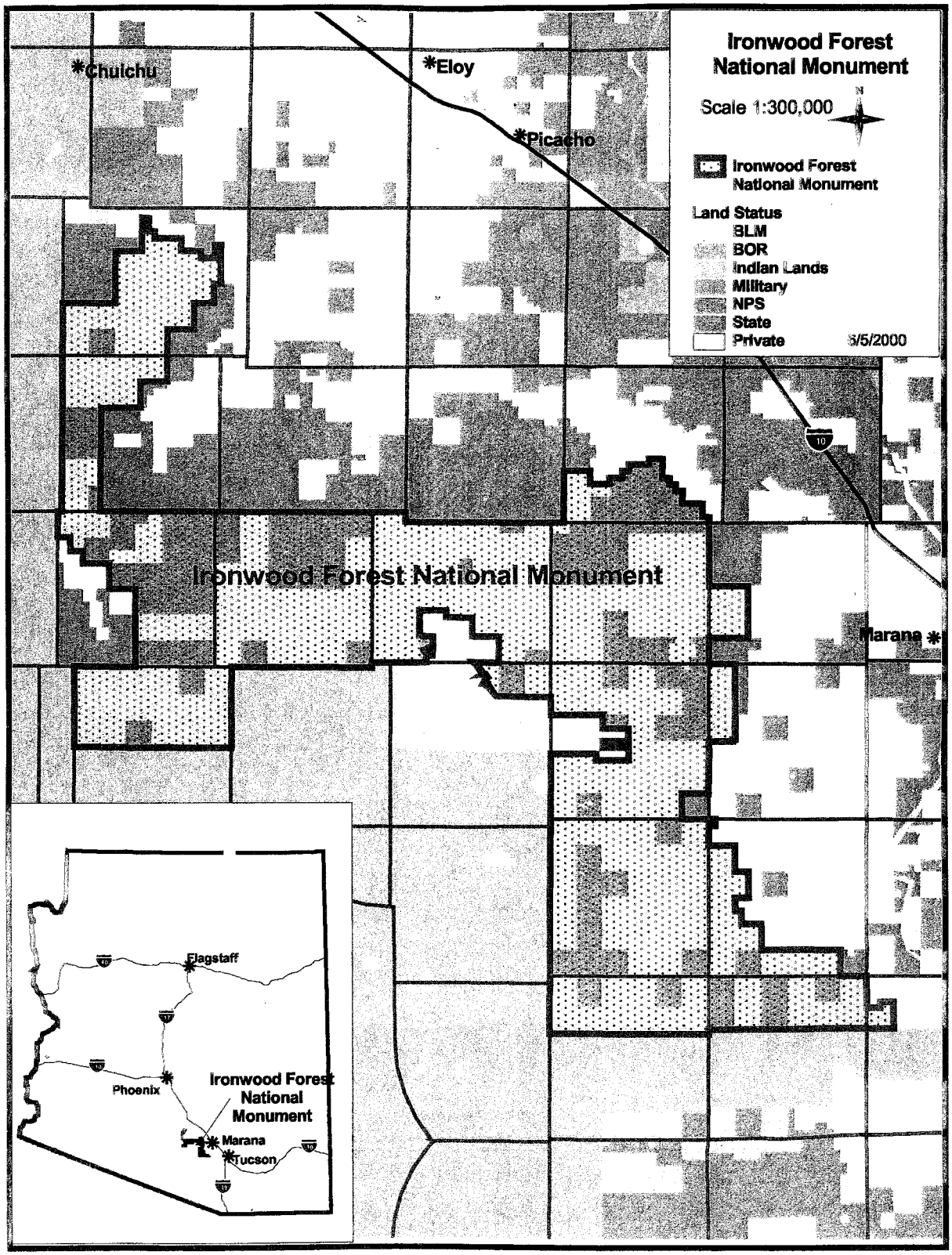

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. 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.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the ''John J. Buchanan Post Office Building''. (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210
Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212
American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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