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WASHINGTON, DC

WHEN: September 13, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7334 of August 26, 2000

Women's Equality Day, 2000

By the President of the United States of America

A Proclamation

In March of 1776, 4 months before the signing of the Declaration of Independence, Abigail Adams sent a letter to her husband John in Philadelphia, where he was participating in the Second Continental Congress. ''...[I]n the new Code of Laws which I suppose it will be necessary for you to make,'' she wrote, ''I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors.'' Almost a century and a half would pass before her desire was realized with the ratification of the 19th Amendment to the Constitution, guaranteeing women's suffrage.

The road to civic, economic, and social equality for women in our Nation has been long and arduous, marked by frustrations and setbacks, yet inspired by the courageous actions of many heroic Americans, women and men alike. Elizabeth Cady Stanton, Susan B. Anthony, Sojourner Truth, Lucretia Mott, Frederick Douglass, Lucy Stone—these and so many others refused to remain silent in the face of injustice. Speaking out at rallies, circulating pamphlets and petitions, lobbying State legislatures, risking public humiliation and even incarceration, suffragists slowly changed the minds of their fellow Americans and the laws of our Nation.

Thanks to their efforts, by the mid-19th century some States recognized the right of women to own property and to sign contracts independent of their spouses. In 1890, Wyoming became the first State to recognize a woman's right to vote. Thirty years later, the 19th Amendment made women's suffrage the law of the land. But it would take another 40 years to pass the Equal Pay Act of 1963, which promised women the same salary for performing the same jobs as men, and the Civil Rights Act of 1964, which outlawed employment discrimination based on gender. Another 8 years would pass before Title IX of the Education Amendments of 1972 assured American women equal opportunity in education and sports programs.

However, the promise of true equality has yet to be realized. Despite historic changes in laws and attitudes, a significant wage gap between men and women persists, in traditional sectors as well as in emerging fields, such as information technology. While employment of computer scientists, programmers, and operators has increased at a breathtaking rate—by 80 percent since 1983—fewer than one in three of these high-wage jobs is filled by a woman. A recent report by the Council of Economic Advisers noted that, even after allowing for differences in education, age, and occupation, the wage gap between men and women in high-technology professions is still approximately 12 percent—a gap similar to that estimated in the labor market at large—and that, in both the old economy and the new, the gap is even wider for women of color.

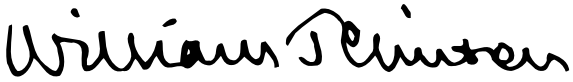
To combat unfair pay practices and to close the wage gap between men and women once and for all, I have called on the Congress to support my Administration's Equal Pay Initiative and to pass the Paycheck Fairness Act. And in May of this year, I announced the creation of a new Equal Employment Opportunity Commission (EEOC) Equal Pay Task Force to empower EEOC field staff with the legal, technical, and investigatory support

they need to pursue charges of pay discrimination and to take appropriate action whenever such discrimination occurs. I have also proposed in my fiscal 2001 budget an initiative under which the National Science Foundation will provide $20 million in grants to postsecondary institutions and other organizations to promote the full participation of women in the science and technology fields.

Today, a new century lies before us, offering us a fresh opportunity to make real the promise that Abigail Adams dreamed of more than two centuries ago. As we celebrate Women's Equality Day and the 80th anniversary of the ratification of the 19th Amendment, let us keep faith with our mothers, wives, sisters, and daughters by removing any lingering barriers in their path to true equality.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 2000, as Women's Equality Day. I call upon the citizens of our great Nation to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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Rules and Regulations

Federal Register
Vol. 65, No. 169
Wednesday, August 30, 2000

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AI69

Positions Restricted to Preference Eligibles

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations covering competitive service positions that are restricted to preference eligibles. These regulations update the responsibilities of both individual agencies and OPM to provide career transition assistance to preference eligibles who are separated by reduction in force because their positions are contracted out to the private sector under authority of Office of Management and Budget Circular A–76.

DATES: These final regulations are effective September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqueline R. Yeatman, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, OPM published interim regulations at 64 FR 40505 covering special career transition assistance benefits that are available to preference eligibles in restricted positions whose work is contracted out to the private sector under authority of Office of Management and Budget Circular A–76.

The interim regulations were effective upon publication in the **Federal Register**. Interested parties could submit written comments to OPM concerning the regulations in the 60 day period following publication of the regulations.

For reference, section 5 U.S.C. 3310 limits entrance examinations for the positions of custodian, elevator operator, guard, and messenger only to preference eligibles, provided that preference eligibles are available for these positions. OPM implements this statutory requirement through regulations published in 5 CFR part 330, subpart D.

Beginning with final regulations OPM published on September 30, 1985, at 50 FR 39876, OPM has provided special career transition benefits for preference eligible employees who hold restricted positions, and who are separated by reduction in force because their positions were contracted out to the private sector under authority of OMB Circular A–76. OPM later revised the 5 CFR part 330, subpart D regulations on June 27, 1994, at 59 FR 32873, to include changes in OPM's programs for displaced employees.

OPM is now again revising this subpart to reflect subsequent changes in available placement programs, including the Career Transition Assistance Plan authorized by 5 CFR 330, subpart F, and the Interagency Career Transition Assistance Plan authorized by 5 CFR 330, subpart G.

Comments

OPM received one comment, from a Federal agency, on the interim regulations. The agency concurred with the regulations as written.

Final Regulations

The interim regulations published at 64 FR 40505 are published as final regulations without further revision to 5 CFR 330, subpart D. A cross-reference is added to these regulations concerning eligibility for the Interagency Career Transition Assistance Plan is added to 5 CFR 330, subpart G.

Summary of Benefits Provided by These Final Regulations

Final 5 CFR 330.404 affirms that both individual agencies and OPM have additional responsibilities when the agency, under authority of Office of Management and Budget Circular A–76, contracts out the work of a preference eligible who holds a restricted position.

Final 5 CFR 330.405 affirms that, if a preference eligible is separated from a restricted position by reduction in force because the agency contracts out the veteran's work under OMB Circular A–76, the agency must provide the employee with transition services and selection priority authorized under the Career Transition Assistance Plan and the Interagency Career Transition Assistance Plan. The agency is also responsible for applying OMB's policy directives on the preference eligible's right of first refusal for positions that are contracted out to the private sector. Finally, the agency is required to cooperate with State dislocated worker units in retraining the displaced preference eligible for other continuing positions.

Final 5 CFR 330.406 updates OPM's responsibilities under 5 CFR 330, subpart D. OPM's responsibilities for preference eligibles displaced from restricted positions as the result of contracting out include requiring agencies to provide the veterans with both internal selection priority (*e.g.*, the Career Transition Assistance Plan), and with interagency selection priority (e.g., the Interagency Career Transition Assistance Plan). Other OPM responsibilities include encouraging cooperation between local Federal activities to assist these displaced preference eligibles in obtaining other Federal positions, including positions with the U.S. Postal Service, and monitoring these placement efforts.

Final 5 CFR 330.407 provides that preference eligibles who are separated from restricted positions by reduction in force because their work is contracted out have interagency selection priority under the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force. Other Federal employees have this interagency selection priority for 1 year following reduction in force separation. A cross reference to this provision is added to the final regulations in a new § 330.704(c)(7).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 330

Armed Forces reserves, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the interim rule which was published at 64 FR 40505 on July 27, 1999, is adopted as final with the following changes:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310, subpart I also issued under sec. 4432 of Pub. L. 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 738; subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Subpart D of part 330 is revised to read as follows:

Subpart D—Positions Restricted to Preference Eligibles

Sec.
330.401 Competitive examination.
330.402 Direct recruitment.
330.403 Noncompetitive actions.
330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.
330.405 Agency placement assistance.
330.406 OPM placement assistance.
330.407 Eligibility for the Interagency Career Transition Assistance Plan.

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Competitive examination.

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

§ 330.402 Direct recruitment.

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

§ 330.403 Noncompetitive actions.

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only when authorized by OPM.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A–76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities are applicable if a preference eligible holds a competitive service position that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and

(b) In retention tenure group tenure I or II, as defined in § 351.501(b) (1) and (2) of this chapter.

§ 330.405 Agency placement assistance.

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.602, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

(a) Applying OMB's policy directives on the preference eligibles' right of first refusal for positions that are contracted out to the private sector; and

(b) Cooperating with State dislocated worker units, as designated or created under title III of the Job Training Partnership Act, to retrain displaced preference eligibles for other continuing positions.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;

(b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and

(c) Encouraging cooperation between local Federal activities to assist these displaced preference eligibles in applying for other Federal positions, including positions with the U.S. Postal Service.

§ 330.407 Eligibility for the Interagency Career Transition Assistance Plan.

(a) A preference eligible who is separated from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 has interagency selection priority under the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part. Section 330.704 covers the general eligibility requirements for the Interagency Career Transition Assistance Plan.

(b) A preference eligible covered by this subpart is eligible for the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force from a restricted position.

3. In subpart G, § 330.704, paragraph (c)(7) is added to read as follows:

§ 330.704 Eligibility.

* * * * *

(c) * * *

(7) Two years after separation, for those employees eligible under § 330.407(b).

[FR Doc. 00–21948 Filed 8–29–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 278

[Amendment No. 383]

RIN 0584–AC05

Food Stamp Program: Retailer Application Processing

AGENCY: Food and Nutrition Service, USDA

ACTION: Final Rule.

SUMMARY: This final rule implements a revised processing timeframe for retail food stores and wholesale food concerns that apply for authorization to accept and redeem food stamp benefits and clarifies verification requirements. This rule lengthens the application processing timeframe from the current period of 30 days to 45 days. In addition to lengthening the time allowed for processing applications, this rule requires specific documentation from an applicant to verify a firm's eligibility.

This final rule also incorporates two provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of (PRWORA) 1996, related to the collection of tax information from firms applying for authorization or from firms being reauthorized in the program and the written permission for the Food and Nutrition Service (FNS) to verify such information with appropriate agencies.

EFFECTIVE DATE: The amendments in this rule are effective September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Questions regarding this final rule

should be addressed to Karen J. Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be non-significant under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–602). Samuel Chambers, Jr. the Administrator of the FNS, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule would have almost no impact on the majority of applicant firms, since most applicants are legitimate food stores.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the preamble of the proposed rule published on November 3, 1999 at 64 FR 59665 included a notice that announced our intent to submit revisions to the Office of Management and Budget relative to the information collection and associated burden hours imposed on retailers applying for participation in the FSP.

There are currently 3 forms approved under Office of Management and Budget No. 0584–0008. Each of these forms are used by retailers, wholesalers and meal services, including certain group living arrangements, shelters for battered women and treatment and rehabilitation programs for drug addicts and alcoholics, to apply to the FNS for authorization to accept and redeem food stamp benefits. Form FNS–252; Food Stamp Application for Stores, Form 252–2; Application to Participate in the FSP for Communal Dining Facility/Others; and Form FNS–252R; Food Stamp Application for Stores-Reauthorization. Section 9(c) of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018 (c)) provides the necessary authorization(s) to collect the information contained in these forms.

Comments were solicited for 60 days on the proposed increase in burden hours. No comments were received on the information collection proposal. The burden estimates as currently approved under OMB No. 0584–0008 through October 31, 2003 are shown on the following chart:

Title	Number of respondents	Responses per respondents	Total annual responses	Burden hours per response	Total annual burden hours
Form FNS–252	20,580	1	20,580	.4583	9,432
Form FNS–252–2	1,673	1	1,673	.2000	334
Form FNS–252R	40,368	1	40,368	.1250	5,046
Totals	62,149		62,149		14,812

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. These provisions are as follows: (1) For Program benefit recipients-State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State Agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out as 7 CFR 276.7 (for rules related to non-quality control liabilities) or part 284 (for rules related to quality control liabilities: (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Unfunded Mandate Analysis

Title II of the Unfunded Mandated Reform Act of 1995 (UMRA) Pub. L. 104–04, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

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

Executive Order 13132

FNS has analyzed this final in accordance with the principles set forth in Executive Order 13132.

As such, FNS has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism impact statement is not required.

Background

On November 3, 1999, the FNS published a proposed rule (64 FR 59665) to improve the processing of applications from firms desiring to become authorized to accept and redeem food stamp benefits. The proposed rule sets forth four changes, two discretionary and two reflecting additional authorities provided under the Act, PRWORA Pub. L. 104–193. The

discretionary changes increase the timeframe within which FNS must approve or reject a firm's application from 30 days to 45 days and specify the types of documents firms might be asked to provide. Such documentation may include, but is not limited to, State and local business licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation and invoice records. Section 833 of PRWORA authorized the Department to require that applicant firms sign a release form allowing FNS to verify the accuracy of information submitted by firms. This section also provided that FNS may request the submission of tax records. These changes to existing food stamp law were intended to prevent the authorization of firms which do not qualify for participation in the FSP. Additionally, as provided for in another final rule published on April 30, 1999 at 64 FR 23165, FNS has the authority to require that a retail food store or wholesale food concern be visited to confirm eligibility prior to authorization or reauthorization of such firm. The Department wishes to emphasize that applicant firms or firms applying for reauthorization must cooperate with the store visit requirements.

The public was provided a 60-day period to submit comments on the proposed provisions. One commentor, a major nonprofit retail trade association, submitted comments. The major concerns raised by the commentor are discussed below.

Application Processing Timeframes

The two major comments provided by the commentor relate to the subject of application processing. The first comment suggested that, when on-site visits are not required, the application process should be continued and completed within 30 days instead of the extended period of 45 days. Although this rule provides FNS with the authority to use the full 45-day time period when it is needed, authorizations of qualified firms are completed more quickly whenever possible to avoid or minimize delay. Therefore, determinations on stores not requiring an on-site visit will likely be completed in less than 45 days.

The second comment suggested that no on-site visits should be necessary for reputable retailers. The commentor defines ''reputable'' retailers as those that are well-known and familiar to the Agency. Further, the commentor states that authorization of well-known, reputable retailers within 30 days will ensure the broadest selection of retailers as quickly as possible. The Department expects that most applicant retailers are honest, reputable business persons or entities. Applications from such individuals (or business entities) applicants will continue to be processed in a timely fashion. Visits to stores will be made as circumstances require in the best interests of the FSP.

List of Subjects in 7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line-wholesalers, Penalties.

Accordingly, 7 CFR Part 278 is amended as follows:

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

1. The authority citation for Part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 278.1:

a. Paragraph (a) is amended by removing the last sentence and adding three new sentences in its place; and

b. The introductory text of paragraph (b) is revised.

The revisions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* * * * FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to, a completed application form, all information and documentation from the applicant, as well as any needed third-party verification and documentation.

(b) *Determination of authorization.* An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program. In determining whether a firm qualifies for authorization, FNS shall consider all of the following:

* * * * *

3. In § 278.9, a new paragraph (m) is added to read as follows:

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

* * * * *

(m) *Amendment No. 383.* The program changes made to § 278.1 by this amendment are effective September 29, 2000.

Dated: July 26, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–21905 Filed 8–29–00; 8:45 am]

BILLING CODE 3410–30–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

General Rules and Regulations, Public Utility Holding Company Act of 1935

CFR Correction

In Title 17 of the Code of Federal Regulations, Part 240 to end, revised as of April 1, 2000, on page 529, in §250.87 paragraph (b), third line down, ''(b)'' is removed and ''(a)'' is added in its place.

[FR Doc. 00–55513 Filed 8–29–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–031]

RIN 2115–AE46

Special Local Regulations for Marine Events; Sharptown Outboard Regatta, Nanticoke River, Sharptown, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Sharptown Outboard Regatta, to be held on the waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Nanticoke River during the event.

DATES: This rule is effective from 10 a.m. on September 23, 2000 until 7 p.m. on September 24, 2000.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of this docket and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 21, 2000, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Sharptown Outboard Regatta, Nanticoke River, Sharptown, Maryland, in the **Federal Register** (65 FR 45326). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The North-South Racing Association will sponsor the Sharptown Outboard Regatta on September 23 and September 24, 2000. The event will consist of 60 hydroplanes and runabouts conducting a high speed competitive race on the waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). A fleet of spectator vessels is anticipated for the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion

The Coast Guard is establishing temporary special local regulations on specified waters of the Nanticoke River. The regulated area will include waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). The temporary special local regulations will be enforced from 10 a. m. to 7 p.m. on September 23 and September 24, 2000, and will restrict general navigation in the regulated area during the event. Except for participants in the Sharptown Outboard Regatta and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation will prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Although this regulation will prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs

the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those 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

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. Add temporary § 100.35–T05–031 to read as follows:

§ 100.35–T05–031 Special Local Regulations for Marine Events; Sharptown Outboard Regatta, Nanticoke River, Sharptown, Maryland.

(a) *Definitions.* (1) *Regulated Area.* All waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′47″ N, longitude 075°43′15″ W, to latitude 38°32′42″ N, longitude 75°43′09″ W, thence northeasterly to latitude 38°33′07″ N, longitude 075°42′27″ W, thence northwesterly to latitude 38°33′10″ N, longitude 75°42′46″ W, thence southwesterly to latitude 38°32′47″ N, longitude 75°43′15″ W. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participating Vessels.* Participating vessels include all vessels participating in the Sharptown Outboard Regatta under the auspices of the Maine Event Application submitted by the North-South Racing Association Inc., and approved by the Commander, Fifth Coast Guard District.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall: (i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates.* The regulated area is effective from 10 a.m. on September 23, 2000 until 7 p.m., September 24, 2000.

(d) *Enforcement Times.* This section will be enforced from 10 a.m. to 7 p.m. on September 23 and 24, 2000.

Dated: August 22, 2000.

T.C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–22207 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–00–080]

RIN 2115–AA97

Safety Zone; Lake Erie, Maumee River, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River, Toledo, in the state of Ohio. This zone restricts the entry of vessels into the area designated for the September 3, 2000 Toledo fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of fireworks mortar rounds.

DATES: This rule is effective from 8:30 a.m., to 10 p.m. September 3, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public docket for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 A.M. and 2 P.M., Monday through Friday, except federal holidays. The Marine Safety Office is located at 420 Madison Ave., Suite 700, Toledo, Ohio 43604; (419) 259–6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. We had insufficient time to publish a Notice of Proposed Rulemaking because we did not receive adequate advance notice of this event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with fireworks displays.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the City of Toledo Fireworks. Entry into the safety zone without permission of the Captain of the Port is prohibited. The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF–FM Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule 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 finding is based on the historical lack of vessel traffic at this time of year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–080 is added to read as follows:

§ 165.T09–080 Safety zone: Lake Erie, Maumee River, Ohio.

(a) *Location.* A temporary safety zone is established for the waters and adjacent shoreline extending from the bow of the museum ship SS WILLIS B. BOYER then NNE to the south end of the City of Toledo Street, Harbors and Bridges Building then SW to the red nun bouy #64 then SSE to the museum ship SS WILLIS B. BOYER. A triangle as formed by positions 41° 38′ 35″ N, 083° 31′ 54″ W; 41° 38′ 51″ N, 083° 31′ 50″ W; 41° 38′ 48″ N, 083° 31′ 58″ W. All nautical positions are based on North American Datum of 1983.

(b) *Effective dates.* This regulation is effective from 8:30 a.m. to 10 p.m., Sept 3, 2000.

(c) *Restrictions.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 18, 2000.

David L. Scott,

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

[FR Doc. 00–22210 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–206]

RIN 2115–AA97

Safety Zone; Fireworks Display, Rockaway Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

a fireworks display located on the Atlantic Ocean. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Atlantic Ocean.

DATES: This rule is effective from 8 p.m. (e.s.t.) on September 3, 2000 until 9:30 p.m. (e.s.t.) on September 4, 2000.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–206) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the fact that the Application for Approval of Marine Event was received too late to permit sufficient time to draft and publish an NPRM. Further, it is a local event with minimal impact on the waterway, vessels may continue to transit through the Atlantic Ocean near Rockaway Beach during the event, and permission may be granted to transit the zone for all but approximately 15 minutes of the 1½ hour event. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone; there are no commercial facilities in the vicinity of the zone. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit through the Atlantic Ocean near Rockaway Beach during the event, and permission may be granted to transit the zone for all but approximately 15 minutes of the 1½ hour event. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone; there are no commercial facilities in the vicinity of the zone.

Background and Purpose

The Coast Guard received an application to hold a fireworks program on the waters of the Atlantic Ocean. This regulation establishes a safety zone in all waters of the Atlantic Ocean within a 360-yard radius of the fireworks barge in approximate position 40°34′29″ N 073°50′00″ W (NAD 1983), about 335 yards off Rockaway Beach at 116th street. The safety zone is in effect from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on Sunday, September 3, 2000. If the event is cancelled due to inclement weather, then this section is effective from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on Monday, September 4, 2000. The safety zone prevents vessels from transiting a portion of the Atlantic Ocean and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the Atlantic Ocean near Rockaway Beach during this event. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone; there are no commercial facilities in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, the ability of vessels to transit through the Atlantic Ocean near Rockaway Beach during the event, the ability of vessels to moor at or get underway from recreational piers in the vicinity of the zone during the event, the absence of commercial facilities in the vicinity of the zone, and the advance notifications which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 12″ mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Atlantic Ocean during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is a local event with minimal impact on the waterway, vessels may continue to transit through the Atlantic Ocean near Rockaway Beach during the event, and permission may be granted for vessels to transit the zone for all but approximately 15 minutes of the ½ hour event. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone during the event; there are no commercial facilities in the vicinity of the zone. Before the effective period, we will publish this event in the Local Notice to Mariners, which is widely available to users of the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities were notified of this marine event by its publication in the First Coast Guard District Local Notice to Mariners #33 dated August 15, 2000.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

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 rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–206 to read as follows:

§ 165.T01–206 Safety Zone; Fireworks Display, Rockaway Beach, NY.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within a 360-yard radius of the fireworks barge in approximate position 40°34′29″ N 073°50′00″ W (NAD 1983), about 335 yards off Rockaway Beach at 116th street.

(b) *Effective period.* This section is effective from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on September 3, 2000. If the event is cancelled due to inclement weather, then this section is effective from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on September 4, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

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

Dated: August 18, 2000.

R.E. Bennis,

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

[FR Doc. 00–22206 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–00–079]

RIN 2115–AA97

Safety Zone; Lake Erie, Maumee River, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River, Rossford, in the state of Ohio. This zone restricts the entry of vessels into the area designated for the Rossford fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of fireworks mortar rounds. Entry of vessels into this zone is prohibited unless specifically authorized by the Captain of the Port. The Captain of the Port can be reached via Coast Guard Station Toledo on VHF channel 16.

DATES: This rule is effective from 2 p.m., until 10 p.m., September 2, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public docket for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 a.m. and 2 p.m., Monday through Friday, except federal holidays. The Marine Safety Office is located at 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with fireworks displays. We had insufficient time to publish a Notice of Proposed

Rulemaking because we did not receive adequate advance notice of this event.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the City of Rossford Labor Day Fireworks. Entry into the safety zone without permission of the Captain of the Port is prohibited.

The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF–FM Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule 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 finding is based on the historical lack of vessel traffic at this time of year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those 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. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–079 is added to read as follows:

§ 165.T09–079 Safety zone: Lake Erie, Maumee River, Ohio.

(a) *Location.* A temporary safety zone is established for the waters and adjacent shoreline inside a 420′ radius as extended from position 41° 36′ 97″ N, 083° 34′ 94″W, at the north end of Jennings Street, Rossford, Ohio. All nautical positions are based on North American Datum of 1983.

(b) *Effective dates.* This regulation is effective from 2 p.m., September 2, 2000 to 10 p.m., September 2, 2000.

(c) *Restrictions.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 18, 2000.

David L. Scott,

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

[FR Doc. 00–22205 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048a; FRL–6861–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Withdrawal of direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve a revision to the opacity

limit for drier stacks at the Georgia Pacific Corporation Softboard Plant in Jarratt, VA. In the direct final rule published on July 19, 2000 (65 FR 44683), we stated that if we received adverse comment by August 18, 2000, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on July 19, 2000 (65 FR 44709). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of August 30, 2000.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Phone (215) 814–2191 or e-mail knapp.ruth@epa.gov.

List of Subjects in 40 CFR Part 52

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

Dated: August 21, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

Accordingly, the amendment to the table in § 52.2420(d) which added the entry for Georgia-Pacific Corporation—Jarratt Softboard Plant is withdrawn as of August 30, 2000.

[FR Doc. 00–22161 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI43–7283; FRL–6851–5]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is adjusting the applicability date for reinstating the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in Muskegon County, Michigan and is determining that the area has attained the 1-hour ozone NAAQS. This determination is based on 3 consecutive years of complete, quality-assured, ambient air monitoring data for the 1997–1999 ozone seasons that demonstrate that area has attained the ozone NAAQS. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, and certain related requirements of part D of subchapter I of the Clean Air Act (CAA), do not apply to the Muskegon area.

EPA is also approving the State of Michigan's request to redesignate Muskegon County to attainment for the 1-hour ozone NAAQS. Michigan submitted the redesignation request for the Muskegon area on March 9, 1995, and submitted two updates to the request on June 14 and July 5, 2000. In approving this redesignation request, EPA is also approving the State's plan for maintaining the 1-hour ozone standard for the next 10 years as a revision to the Michigan State Implementation Plan (SIP). In this direct final rule, EPA is also notifying the public that we believe the motor vehicle emissions budgets for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the Muskegon, MI submitted maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan.

In the proposed rules section of this **Federal Register**, EPA is proposing approval of, and soliciting comments on, this SIP revision. If we receive adverse comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule based on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

DATES: This ''direct final'' rule is effective October 18, 2000, unless EPA receives adverse written or critical comments by September 29, 2000. If adverse comments are received, EPA will publish timely notice in the **Federal Register** and withdraw the rule.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Mooney at (312) 886–6043 before visiting the Region 5 Office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

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I. Adjustment of Applicability Date for Reinstating the 1-Hour Ozone Standard

A. Why Did EPA Revoke the 1-Hour Ozone Standard in Muskegon?

On June 5, 1998 (63 FR 31014), July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911), the EPA revoked the 1-hour ozone NAAQS in many areas around the country in anticipation of implementing the new 8-hour ozone NAAQS that was established in 1997. EPA revoked the 1-hour standard to allow areas that were showing attainment to redirect their focus toward meeting the new 8-hour standard. On June 9, 1999, the EPA revoked the 1-hour standard for the Muskegon area

because ozone monitors were showing attainment of the ozone NAAQS.

B. Why Did EPA Reinstate the 1-Hour Ozone Standard in Muskegon?

On May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on the 8-hour ozone NAAQS that blocked EPA's ability to implement the new standard. That action left nearly 3,000 U.S. counties without any Federal public health standard for ozone. To remedy this situation, on July 20, 2000, EPA published a final rulemaking action in the **Federal Register** (65 FR 45181) to reinstate the 1-hour standard in areas where it had been revoked, including Muskegon.

C. What Does Reinstatement Mean for Muskegon?

For areas with clean air quality data, like Muskegon, the July 20, 2000 rulemaking specifies that reinstating the nonattainment designation will occur 180 days after EPA published the rulemaking. EPA is giving these areas extra time to develop and submit redesignation requests and the rule specifies a procedure by which EPA can accelerate the effective date of the reinstatement and redesignate at the same time. EPA is using that procedure in this action.

II. Determination of Attainment

A. What Action is EPA Taking?

The EPA is determining that the Muskegon moderate ozone nonattainment area has attained the NAAQS for ozone. On the basis of this determination, EPA is also determining that certain CAA requirements do not apply to the Muskegon area as long as it continues to attain the ozone NAAQS. These requirements are (section 172(c)(1)) attainment demonstration requirements, (section 172(c)(9)) contingency measure requirement, (section 182(b)(1)) 15 percent plan reasonable further progress (RFP) requirement, and (section 182(b)(1)) attainment demonstration requirement.

B. Why is EPA Taking This Action?

The EPA believes it is reasonable to interpret provisions regarding attainment demonstrations and certain related provisions to not require SIP submissions, as described further below, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.,* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). The EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1997 to 1999 ozone seasons that demonstrate that the Muskegon area has attained the ozone NAAQS. Preliminary ozone monitoring data for 2000 continue to show that the area is attaining the ozone NAAQS.

C. What Would Be the Effect of This Action?

The requirements of sections 172(c)(1) and 182(b)(1) concerning the submission of a RFP plan and the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment will not apply to the area.

D. What Is the Background for This Action?

Subpart 2 of part D of Subchapter I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. The EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations and certain related provisions to not require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.,* attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of Subchapter I (sections 171 and 172) to not require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 (section 182) in the same manner. (*See Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996))

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA.'' If an area has monitored attainment of the relevant NAAQS, EPA believes there is no need for the State to submit additional measures to achieve attainment. This is consistent with the interpretation of certain section 172(c) requirements provided by EPA in State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498). As EPA stated in the preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR 13564). Upon attaining the NAAQS, the focus of state planning efforts shifts to maintaining the NAAQS and developing a maintenance plan under section 175A.

Similarly, the EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer applying once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date'' (57 FR 13564).

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other states with respect to the NAAQS (see section 110(a)(2)(D)). The EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the CAA to require such emission reductions if necessary and appropriate to deal with transport situations.

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Muskegon moderate ozone nonattainment area from the 1997 through 1999 ozone seasons. This data is summarized in Table 1 of this document covering EPA's analysis of the redesignation request. Preliminary monitoring data for 2000 show the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA determines that the area has attained the 1-hour ozone standard during the 1997–99 period, which is the

most recent three-year time period of air quality monitoring data. The State therefore is not required to submit an attainment demonstration, 15 percent RFP, and a section 172(c)(9) contingency measure plan.

E. Where is the Public Record and Where Do I Send Comments?

The official record for this direct final rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. If we receive adverse comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule based on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

III. Redesignation Request

A. What Action Is EPA Taking?

The EPA is approving the redesignation request for the Muskegon area because three years of ambient monitoring data demonstrate that the ozone NAAQS has been attained and the area has satisfied the other requirements for redesignation. The EPA is approving the maintenance plan submitted by the Michigan Department of Environmental Quality (MDEQ) as a revision to the SIP. The EPA is also notifying the public that we believe the motor vehicle emissions budgets for VOC and NO_X are adequate for conformity purposes and approvable as part of the maintenance plan.

B. What Would Be the Effect of the Redesignation?

The redesignation would change the official designation of Muskegon County from nonattainment to attainment for the 1-hour ozone standard. It would also put a plan in place to maintain the 1-hour ozone standard for the next 10 years. This plan includes contingency measures to correct any future violations of the 1-hour ozone standard. It also includes motor vehicle emissions budgets for VOC and NO_X which would be used in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

C. What Is the Background For This Action?

The EPA originally designated the Muskegon area as an ozone nonattainment area under section 107 of the 1977 CAA on March 3, 1978 (43 FR 8962). The EPA revisited this original designation in 1991 to reflect new designation requirements contained in the Clean Air Act Amendments of 1990 (1990 Act). The 1990 Act authorized the EPA to designate nonattainment areas according to degree of severity of the nonattainment problem. On November 6, 1991 (56 FR 56694), the EPA designated the Muskegon area as a serious ozone nonattainment area, and later corrected that action to designate the area as a moderate ozone nonattainment area on November 30, 1992 (57 FR 56762).

The Muskegon area has since recorded three years of complete, quality-assured, ambient air quality monitoring data for 1997–1999, thereby demonstrating that the area has attained the 1-hour ozone NAAQS.

On March 9, 1995, the State of Michigan submitted a redesignation request and section 175A maintenance plan for the Muskegon ozone nonattainment area. The State updated this 1995 submittal and submitted the revised plan to the EPA on June 14, 2000, and July 5, 2000. This revised plan included updated emissions inventory calculations and air quality monitoring data.

D. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, on April 16, 1992 (57 FR 13498) and supplemented the guidance on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994. (Nichols, October 1994)
2. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.
3. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.
4. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992. (Calcagni, October 1992)
5. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.
6. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

E. What is EPA's Analysis of the Request?

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality assured monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR 58, and recorded in AIRS. The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The MDEQ submitted ozone monitoring data for the 1996–1998 and the 1997–1999 ozone seasons. Table 1 below summarizes the air quality data.

TABLE 1—1-HOUR OZONE EXCEEDANCES IN THE MUSKEGON AREA

Site	Year	Exceedances measured	Expected exceedances
Muskegon	1996	1	1
	1997	0	0
Monitor: 26–121–0039	1998	0	0
	1999	1	1

This data has been quality assured and is recorded in AIRS. During the 1997–1999 time period, the monitor recorded only one exceedance of the ozone NAAQS, resulting in a three year average of .3 exceedances per year. Preliminary 2000 ambient air quality monitoring data indicates that the area continues to meet the ozone NAAQS, although an exceedance may have occurred on June 9, 2000. If this June 9, 2000 exceedance is confirmed, the area would still show attainment of the 1-hour standard.

2. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Before the Muskegon area may be redesignated to attainment for ozone, it must have fulfilled the applicable requirements of section 110 and part D. The Calcagni memorandum dated September 4, 1992, states that areas requesting redesignation to attainment must fully adopt rules and programs that come due prior to the submittal of a complete redesignation request.

Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of the CAA. These requirements include but are not limited to the following: a SIP submittal that has been adopted by the state after reasonable notice and public hearing; provisions to establish and operate appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; provisions for modeling; and provisions for public and local agency participation.

For purposes of redesignation, EPA reviewed the Michigan SIP to ensure that it satisfied all requirements under the amended CAA through approved SIP provisions. A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. The EPA has analyzed the Michigan SIP and determined that it is consistent with the requirements of amended section 110(a)(2). (See also 61 FR 20458 and *Southwestern Growth Alliance* v. *Browner,* 144 F.3d 984 (6th Cir. 1998)).

Part D: General Provisions for Nonattainment Areas

Before the Muskegon area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a). As described in EPA's general preamble for the implementing of Title 1 of the 1990 Act, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). EPA classified the Muskegon area as moderate ozone nonattainment on November 6, 1991 (56 FR 56694). Therefore, to redesignate the Muskegon area, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, and the applicable requirements of subpart 2 of part D.

Section 172(c) Requirements

EPA has determined that MDEQ's redesignation request for the Muskegon area has satisfied all of the requirements under section 172(c) necessary for the area's redesignation to attainment. Many of the general requirements contained in section 172(c) are addressed by the State's pre-amendment submittal which EPA approved on May 6, 1980 (45 FR 29801). In part 2 of this rulemaking, entitled ''Determination of Attainment,'' EPA is determining that several of the section 172(c) requirements do not apply since the area has attained the ozone NAAQS. The requirements for emissions inventories uinder section 172(c)(3) and permits programs under section(c)(5) still need to be addressed in order to redesignate the area.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. EPA approved the base year emissions inventory for Muskegon on July 26, 1994 (59 FR 37947).

Section 172(c)(5) requires permits to construct and operate new and modified major stationary sources anywhere in the nonattainment area (a NSR program). The EPA has determined that areas being redesignated do not need an approved NSR program prior to redesignation provided that the area demonstrates maintenance of the standard without a NSR program in effect. A memorandum from Mary Nichols dated October 14, 1994 describes the rationale for this decision. See discussion in the Grand Rapids, Michigan notice published on June 21, 1996 (61 FR 31831). EPA has also applied this policy in redesignations of Youngstown-Warren, Columbus, Canton, Cleveland-Akron-Lorain, Dayton-Springfield, Toledo, Preble County, Columbiana County, Clinton County, and Cincinnati Ohio, as well as Detroit, Michigan. Additional information on EPA's rationale is in the approval of the redesignation request for the Cincinnati area (65 FR 37879).

The State has demonstrated that the Muskegon area can maintain the standard without a NSR program in effect, and, therefore, the State need not have a fully approved NSR program prior to approval of the redesignation request for the Muskegon area. The MDEQ's federally delegated PSD program will become effective in the Muskegon area upon redesignation to attainment.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to

the air quality planning goals in the applicable SIP. This requirement applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), and to all other Federally supported or funded projects (''general conformity''). Section 176(c) of the CAA requires transportation conformity. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate. EPA approved Michigan's general and transportation SIPs on December 18, 1996 (61 FR 66607).

The on-highway motor vehicle budgets for Muskegon are 7 tons of NO_X/day and 5 tons of VOC/day, based on the area's 2010 level of emissions. Muskegon, MI must use the motor vehicle emissions budgets from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

The EPA believes the motor vehicle emissions budgets for VOC and NO_X are adequate for conformity purposes and approvable as part of the maintenance plan. Interested parties may comment on the adequacy and approval of the budgets by submitting their comments on this direct final rule.

If EPA receives adverse written comments with respect to the approval of the Muskegon emissions budgets, or any other aspect of our approval of this SIP, by the time the comment period closes, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. In this case, we will either respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

Our action on the Muskegon emissions budgets will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Subpart 2 Section 182 Requirements

The Muskegon area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. In accordance with the September 17, 1993, EPA guidance memorandum, the requirements which came due before MDEQ submitted the redesignation request must be fully approved into the SIP before or at the time of the request to redesignate the area to attainment. Those requirements are discussed below:

1990 Base Year Inventory

The 1990 base year emission inventory was due on November 15, 1992. EPA approved the State's submittal on July 26, 1994 (59 FR 37994).

Emission Statements

EPA approved the emission statement SIP required by section 182(a)(3)(B) on March 8, 1994 (59 FR 10752).

15 Percent Plan

As noted above, the 15 percent RFP plan for VOC reductions does not apply because the area has attained the standard.

VOC RACT Requirements

SIP revisions requiring RACT for three classes of VOC sources are required under section 182(b)(2). The categories are: (1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; (3) all other major non-CTG stationary sources. EPA approved the RACT corrections required by section 182(a)(2)(A) and 182(b)(2)(B) on September 7, 1994 (59 FR 46182) [1]). Appendix E of EPA's general preamble for implementing Title I of the 1990 CAA provided that if EPA did not issue CTGs for those source categories by November 15, 1993, States were to submit RACT rules for those source categories by November 15, 1994, which were to be implemented by November 15, 1995. The Muskegon area does not contain sources in any of the relevant source categories. The state submitted negative declarations for these source categories in the redesignation request. As a result, this requirement is not relevant for the area.

Stage II Vapor Recovery

EPA promulgated onboard rules on April 6, 1994 (59 FR 16292); therefore, pursuant to section 202(a)(6) of the CAA, Stage II is no longer required, and a fully approved program is not a prerequisite for redesignation. Additional information on EPA's policies regarding the Stage II vapor recovery program is in the approval of the redesignation request for the Cincinnati, OH area (65 FR 37879).

Vehicle Inspection and Maintenance (I/M)

Section 182(a)(2)(B) motor vehicle inspection and maintenance (I/M) requirement does not apply to Muskegon since the area was not required to implement I/M prior to the enactment of the 1990 Amendments. The motor vehicle I/M requirement to satisfy section 182(b)(4) does not apply to the Muskegon area, since Muskegon is below the population threshold specified in EPA's I/M rule (51 CFR part 350).

NO_X Requirement

On July 13, 1994, Michigan submitted a section 182(f) NO_X petition to be relieved of the section 182(f) NO_X requirements based on urban airshed modeling (UAM). The modeling demonstrates that NO_X emission reductions would not contribute to attainment of the NAAQS for ozone in the modeled area, which includes Muskegon. The EPA approved the section 182(f) petition on January 26, 1996 (61 FR 2428).

3. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Michigan maintains that the Muskegon area is the recipient of overwhelming amounts of ozone transported from the upwind Gary-Chicago-Milwaukee severe ozone nonattainment areas as demonstrated by its November 14, 1994 petition. The overwhelming transport demonstration includes UAM which shows that there is minimal to no change in ozone concentrations in Western Michigan even when the Grand Rapids and Muskegon VOC and NO_X emissions are entirely eliminated. The State, therefore, concludes that emission reductions within the Grand Rapids and Muskegon areas would have little or no impact on ozone concentrations within these two areas. The State maintains that the improvement in air quality in Muskegon is largely due to emission reductions

[1] EPA issued the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation and Reactor CTG on November 15, 1993, prior to the submission of the Muskegon redesignation request. That CTG, however, established a due date for state submittal of the SOCMI Distillation and Reactor rules of March 23, 1995 (*See* March 23, 1994, 59 FR 13717), a date after submission of a request to redesignate Muskegon to attainment. Thus, those rules are not applicable requirements for purposes of this redesignation.

achieved throughout the Lake Michigan region.

Nonetheless, the redesignation request demonstrates that permanent and enforceable emission reductions have occurred in the Muskegon area as a result of the Federal Motor Vehicle Emission Control Program (FMVCP) and controls on industrial sources. The submittal provides a general discussion of developing of the emission inventories for ozone precursors from 1991–1996 which the Lake Michigan Air Directors Consortium (LADCO) prepared for use in the Lake Michigan Ozone Study (LMOS). Although 1991 was not one of the years used to designate and classify the area, it was a nonattainment year. The VOC and NO_X emission inventories for the years 1991 and 1996 submitted by the State show a declining trend in emissions. The 1996 emission inventory is provided as the attainment year emission inventory.

Based on the State's analysis, Muskegon County reduced VOC emissions by 2 tons per day and NO_X emissions by 3 tons per day between 1991 and 1996. The emission reductions are due to a combination of FMVCP and industrial source controls.

4. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

An ozone maintenance plan should address the following five elements: attainment inventory, demonstration of maintenance, monitoring network, verification of continued attainment, and a contingency plan.

Attainment Inventory

The State has adequately developed an attainment emissions inventory for 1996 that identifies VOC and NO_X emissions for the Muskegon nonattainment area. EPA has determined that 1996 is an appropriate year on which to base attainment level emissions because monitors in the area showed attainment of the ozone NAAQS at the time. The methodologies used in developing these inventories are discussed in EPA's TSD, dated July 31, 2000 and in further detail in the State's redesignation submittal.

The attainment level of emissions are summarized below:

TABLE 2.—MUSKEGON 1996 ATTAINMENT INVENTORY—VOC AND NO_X (TONS PER DAY)

Source type	VOC	NO_X
Onroad mobile	5	8
Area	19	6
Point	5	16
Total	29	30

Demonstration of Maintenance

The 1991 emission inventory developed by LADCO for the LMOS modeling effort also served as the basis for calculations to demonstrate maintenance by projecting emissions forward to the years 1996 and 2007. The State has also made adjustments to the inventory to project emissions levels for 2010. These adjustments were made using 2010 growth factors generated by the Economic Growth Analysis (EGAS) model for stationary sources (for point, stationary area, and nonroad mobile source categories). The State made onroad mobile estimates for 2010 using the 1996 LADCO modeling inventory, local speeds and vehicle miles traveled estimates for 2010, and EPA's MOBILE 5a emissions model. Detailed information on the assumptions made in the inventory calculations are found in EPA's TSD and in the State's submittal.

To demonstrate continued attainment, the State projected anthropogenic 1991 emissions of VOC and NO_X to the years 1996, 2007, and 2010. These emission estimates are in the tables below and demonstrate that the VOC and NO_X emissions will decrease in future years. The results of this analysis show that the area is expected to maintain the air quality standard for at least ten years into the future. In fact, the emissions projections show that emissions will be reduced from 1996 levels by 6 tons of VOC and 4 tons of NO_X per day by 2010 in the Muskegon area. These emission reductions will result from the implementation of FMVCP, Federal on-board vapor recovery rules, Title IV NO_X controls, and other Federal rules expected to be promulgated for nonroad engines, autobody refinishing, commercial/consumer solvents, and architectural and industrial maintenance coatings. These estimates are conservative as they do not reflect additional Federal regulations on motor vehicles and fuels that will be in place prior to 2010, nor do they include NO_X reductions that would result from EPA's October 27, 1998 (63 FR 57356) rulemaking which requires states to reduce statewide NO_X emissions to address the regional transport of ground level ozone (NO_X SIP call).

TABLE 3.—MUSKEGON: VOC MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]

Source type	Year			
	1991	1996	2007	2010
Point	7	5	8	4
Area	18	19	15	14
Onroad Mobile	6	5	5	5
Total	31	29	28	23

TABLE 4.—MUSKEGON: NO_X MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]

Source type	Year			
	1991	1996	2007	2010
Point	20	16	14	15
Area	5	6	5	4
Onroad Mobile	8	8	7	7
Total	33	30	26	26

The emission projections show that the emissions are not expected to exceed the level of the base year 1996 inventory during the 10-year maintenance period.

Monitoring network

The State has committed to operate the ozone monitoring network in the Muskegon area in accordance with 40 CFR part 58.

Verification of Continued Attainment

Tracking—Continued attainment of the ozone NAAQS in the Muskegon area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The tracking plan for the Muskegon area consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58.

Triggers—Michigan contends that the high concentrations of ozone monitored and modeled in the Muskegon area are due to transport from upwind areas such as Chicago and Milwaukee. The State also submits that modeling to date indicates that total elimination of anthropogenic VOC and NO_X emission sources in Muskegon would not affect ozone concentrations in the area. The State concludes that continued maintenance of the ozone NAAQS is dependent on continued emission reductions from upwind areas. Consequently, the State identifies an actual monitored ozone violation of the NAAQS, as defined in 40 CFR 50.9, determined not to be attributable to transport from upwind areas, as the triggering event that will cause implementation of a contingency measure. The State's June 14, 2000, supplement to the redesignation request establishes that if the State monitors a violation, the State will inform EPA that a violation has occurred, review data for quality assurance, and conduct a technical analysis including an analysis of meteorological conditions leading up to and during the exceedances contributing to the violation to determine local culpability. The State will submit a preliminary analysis to the EPA and afford the public the opportunity for review and comment. The State will also solicit and consider EPA's technical advice and analysis before making a final determination on the cause of the violation. The trigger date will be the date that the State certifies to the EPA that the State air quality data are quality assured, and that the State has determined the exceedances contributing to the violation are not attributable to transport from upwind areas. The trigger date will be within 120 days after the violation is monitored.

If the EPA disagrees with the State's final determination and believes that the violation was not attributable to transport, but to the area's own emissions, authority exists under section 179(a) and 110(k), to require the area to implement contingency measures, and section 107, to redesignate the area to nonattainment.

Contingency Plan

Despite the best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the CAA, Michigan has provided contingency measures with a schedule for implementation if a future ozone air quality problem occurs. Once the triggering event is confirmed, the State will implement one or more appropriate contingency measures. The Governor or the Governor's designee will select the contingency measure within 6 months of the triggering event. Contingency measures contained in the plan include a motor vehicle I/M program, gasoline RVP reduction to 7.8 pounds per square inch (psi), Stage II gasoline vapor recovery, an industrial cleanup solvent rule, a plastic parts coating rule, and a wood furniture coating rule. The State has provided legislative authority for implementation of the first three measures. In addition, the State will develop rules for the three additional measures should they be necessary to address a violation of the ozone NAAQS. The State provided following schedule for implementation of contingency measures:

TABLE 5—SCHEDULE FOR CONTINGENCY MEASURE IMPLEMENTATION

Measure	Date
Stage II	6 months from decision to employ Stage II or 12 months from triggering event at gasoline dispensing facilities of any size constructed after November 15, 1990. 12 months from decision to employ Stage II or 18 months from triggering event at existing gasoline dispensing facilities dispensing 100,000 gallons of gasoline per month. 24 months from decision to employ Stage II or 30 months from triggering event at existing gasoline dispensing facilities dispensing less than 100,000 gallons of gasoline a month.
Vehicle emissions testing will commence	24 months from decision to employ I/M.
Implement VOC RACT rules for plastic parts coating, wood furniture coating, or industrial cleanup solvents.	20 months from Governor's decision to implement one or more of the measures.

TABLE 5—SCHEDULE FOR CONTINGENCY MEASURE IMPLEMENTATION—Continued

Measure	Date
Implement 7.8 RVP gasoline during summer ozone season	No later than 12 months after decision to employ 7.8 RVP or no later than 18 months from triggering event.

Commitment to Submit Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State has committed to submit a revised maintenance SIP 8 years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional 10 years.

F. Where Is the Public Record and Where Do I Send Comments?

The official record for this direct final rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. If EPA receives adverse written comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

If we receive adverse written comments with respect to the approval of the Muskegon emissions budgets, or any other aspect of our approval of this SIP, by the time the comment period closes, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. In this case, we will either respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

IV. Disclaimer Language Approving SIP Revisions

Ozone SIPs are designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the ozone emission limitations and restrictions in the approved ozone SIP. The State cannot make changes to ozone SIP regulations which will render them less stringent than those in the EPA approved plan unless it submits to EPA a revised plan for attainment and maintenance and EPA approves the revision. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

V. What Administrative Requirements Did EPA Consider?

1. *Executive Order 12866*

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

B. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This 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, 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 CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

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 rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 18, 2000 unless EPA receives adverse written comments by September 29, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Hydrocarbons, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: August 14, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(113) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(113) On March 9, 1995, the State of Michigan submitted a revision to the Michigan State Implementation Plan for ozone containing a section 175A maintenance plan for the Muskegon County area as part of Michigan's request to redesignate the area from nonattainment to attainment for ozone. Elements of the section 175A maintenance plan include a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the 1-hour ozone NAAQS, determined not to be attributable to transport from upwind areas, Michigan will implement one or more appropriate contingency measure(s) which are in the contingency plan. The menu of contingency measures includes a motor vehicle inspection and maintenance program, stage II vapor recovery, a low Reid vapor

pressure gasoline program, and rules for industrial cleanup solvents, plastic parts coating, and wood furniture coating.

(i) Incorporation by reference.

(A) State of Michigan House Bill No. 4165 signed by the Governor and effective on November 13, 1993.

(B) State of Michigan House Bill No. 726 signed by the Governor and effective on November 13, 1993.

(C) State of Michigan House Bill No. 4898 signed by the Governor and effective on November 13, 1993.

3. Section 52.1174 is amended by adding paragraph (r) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(r) Approval—On March 9, 1995, the Michigan Department of Environmental Quality submitted a request to redesignate the Muskegon County ozone nonattainment area to attainment. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the 1-hour ozone NAAQS, determined not to be attributable to transport from upwind areas, Michigan will implement one or more appropriate contingency measure(s) which are in the contingency plan. The menu of contingency measures includes a motor vehicle inspection and maintenance program, stage II vapor recovery, a low Reid vapor pressure gasoline program, and rules for industrial cleanup solvents, plastic parts coating, and wood furniture coating.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7871 *et seq.*

2. In § 81.323 the table entitled ''Michigan—Ozone (1-hour standard)'' is amended by revising the entry for ''Muskegon Area: Muskegon County'' to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

[1-Hour Standard]

Designated areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Muskegon Area:				
Muskegon County	October 18, 2000	Attainment.		
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

* * * * * * *

[FR Doc. 00–21913 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301034; FRL–6736–6]

RIN 2070–AB78

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of glyphosate (*N*-(phosphonomethyl)glycine in or on certain raw agricultural commodities resulting from application of the ethanolamine salt and revises the headers for 40 CFR 180.364. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 30, 2000. Objections and requests for hearings, identified by docket control number OPP–301034, must be received by EPA on or before October 30, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301034 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–5697; and e-mail address: tompkins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301034. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of January 10, 2000 (65 FR 1370) (FR–6394–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Monsanto Company, 600 13th Street NW. Suite 660, Washington DC 20005. This notice included a summary of the petition prepared by Monsanto Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.364 be amended by establishing a tolerance for residues of the herbicide glyphosate, *N*-(phosphonomethy) glycine from application of the ethanolamine salt of glyphosate. The petition (0F6071) notice requested that the 180.364(a) introductory text be revised.

It also proposed that 40 CFR 180.364(a) be amended so that the introductory text for paragraphs (a)(2) and (a)(3) are removed and the commodity tolerances listed in paragraphs (a)(2) and (a)(3) are reorganized into section (a) in alphabetical order in the table. It is further that 40 CFR 180.364(d) be revised.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of glyphosate by revising the existing regulation to include the ethanolamine salt of glyphosate and to revise the introductory text, remove the introductory text for paragraphs (a)(2) and (a)(3), and the commodity tolerances listed in paragraphs (a)(2) and (a)(3) are reorganized into paragraph (a) in alphabetical order in the table, and revising the text in paragraph (d).

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by glyphosate are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV. Technical glyphosate is not a dermal sensitizer.

2. A 21–day dermal toxicity study in which rabbits were exposed to glyphosate at levels of 0, 10, 1,000, or 5,000 milligrams/kilogram/day (mg/kg/day). The systemic no observed adverse effect level (NOAEL) was 1,000 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 5,000 mg/kg/day based on decreased food consumption in males. Although serum lactate dehydrogenase was decreased in both sexes at the high dose, this finding was not considered to be toxicologically significant.

3. A 1–year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOAEL of 500 mg/kg/day.

4. A 2–year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day HDT (males) and 34 mg/kg/day HDT (females) and a systemic NOAEL of 31 mg/kg/day HDT (males) and 34 mg/kg/day HDT (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

6. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 1, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females)

HDT and a systemic NOAEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) HDT and 457 mg/kg/day (females) based on decreased body weight gain 1,183 mg/kg/day (females) HDT.

7. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental (fetal) NOAEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOAEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day HDT.

8. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOAEL of 175 mg/kg/day (insufficient litters were available at 350 mg/kg/day to assess developmental toxicity); a maternal NOAEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day HDT.

9. A multi-generation reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with the parental NOAEL/LOAEL 30 mg/kg/day (HDT). The only effect observed was an increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) in the high-dose male F_3b pups. Since the focal tubular dilation of the kidneys was not observed at the 1,500 mg/kg/day level HDT in the rat reproduction study discussed below, but was observed at the 30 mg/kg/day level HDT in the 3–generation rat reproduction study, the latter was a spurious rather than glyphosate-related effect. Therefore, the parental and reproductive (pup) NOAELs are 30 mg/kg/day.

10. A 2–generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a systemic NOAEL of 500 mg/kg/day based on soft stools in F_0 and F_1 males and females at 1,500 mg/kg/day HDT and a reproductive NOAEL 1,500 mg/kg/day HDT.

11. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE)= NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

1. *Acute toxicity*. No toxicological endpoint attributable to a single dose was identified in oral studies including the rat and rabbit developmental studies. There are no data requirements for acute or subacute neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

2. *Short- and intermediate-term toxicity*. No short- or intermediate-term dermal or inhalation endpoints were identified. In a 21–day dermal toxicity study with rabbits, no systemic or dermal toxicity was seen following repeated applications of glyphosate at 0, 100, 1,000, or 5,000 mg/kg/day. The NOAEL was 1,000 mg/kg/day and the LOAEL was 5,000 mg/kg/day based on decreased food consumption in males. In addition, the use of 3% dermal absorption rate (estimated) in conjunction with the oral NOAEL of 175 mg/kg/day established in the rabbit development study yields a dermal equivalent dose of greater than 5,000 mg/kg/day.

Based on the low toxicity of the formulation product (Toxicity Category III and IV) and the physical characteristics of the technical product, there is minimal concern for potential inhalation exposure or risk. The acute inhalation study was waived for technical glyphosate. Some glyphosate end-use products are in Toxicity Category I or II for eye or dermal irritation. The Reregistration Eligibility Decision document for Glyphosate (September 1993) indicates that the Agency is not adding any additional personal protective equipment (PPE) requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in Toxicity Categories I and II.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for glyphosate at 2.0 mg/kg/day. This RfD is based on the maternal NOAEL of 175 mg/kg/day from a rabbit developmental study and a 100–fold UF.

4. *Carcinogenicity*. Glyphosate has been classified as a Group E chemical - no evidence of carcinogenicity in two acceptable animal species.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.364 or the residues of glyphosate, in or on a variety

of raw agricultural commodities. Tolerances are established on kidney of cattle, goats, hogs, horses, and sheep at 4.0 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.5 ppm; and liver and kidney of poultry at 0.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk assessment was not performed because no endpoints attributable to single dose were identified in the oral studies including rat and rabbit developmental studies. There are no data requirements for acute and subchronic neurotoxicity studies and no evidence of neurotoxicity in any of the toxicity studies at very high doses. The Agency concludes with reasonable certainty that glyphosate dose not elicit an acute toxicological response. An acute dietary risk assessment is not needed.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA [1989–1992] nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure analysis was conduced using the (RfD) of 2.0 mg/kg/day based on the maternal NOAEL of 175 mg/kg/day from a developmental study and an uncertainty factor of 100 (applicable to all population groups). The Dietary Exposure Evaluation Model (DEEM®) analysis assumed tolerance levels residues and 100% of the crop treated. These assumptions resulted in the following theoretical maximum residue contributions (TMRCs) and percent of the RfDs for certain population subgroups. The TMRC for the US population (48 states) was 0.029960 or 1.5% of the RfD, 0.026051 or 1.3% of the RfD for nursing infants (less than 1 year old), 0.065430 or 3.3% of the RfD for non-nursing infants less than 1 year old; 0.064388 or 3.2% of the RfD for children (1–6 years old); 0.043017 or 2.2% of the RfD for children (7–12 years old); 0.030928 or 1.5% of the RfD for females (13+/nursing); 0.030241 or 1.5% of the RfD for non-Hispanic whites; and 0.030206 or 1.5% of the RfD for non-Hispanic blacks. Neither percent crop treated nor anticipated residues were used for this risk assessment.

iii. *Cancer*. A cancer risk assessment was not performed because glyphosate has been classified as a Group E chemical no evidence of carcinogenicity in two acceptable aninal species. The Agency concludes with reasonable certaintly that glyphosate does not elict a toxicological cancer response. A cancer risk assessment is not needed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for glyphosate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of glyphosate.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to glyphosate they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of glyphosate in surface water and ground water for acute exposures are estimated to be 1.64 parts per billion (ppb) for surface water and 0.000852 ppb for ground water. The EECs for chronic exposures are estimated to be 0.19 ppb for surface water and 0.00111 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Glyphosate is currently registered for use on the following residential non-dietary sites: around ornamentals, shade trees, shrubs, walks driveways, flower beds, and home lawns. Based on the registered uses for glyphosate, the potential for residential exposure exists. However based on the low acute toxicity and lack of other toxicological concerns, glyphosate does not meet the Agency's criteria for residential data requirements. This risk assesment was not conducted. Exposures from residenitial uses are not expected to pose undue risks or harm to the public health.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glyphosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not

assumed that glyphosate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to in utero and postnatal exposure to glyphosate.

3. *Conclusion*. There is a complete toxicity data base for glyphosate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because there was no indication of increased susceptablilty of rats or rabbits to in utero and/or postnatal exposure to glyphosate. In the prenatal developmental toxicity studies in rats and rabbits and the 2–generation reproductions study in rats, effects in the offspring were observed only at or above treatment levels whichresulted in evidence of appreciable parental toxicity. The use of generally high quality data, conservative models and/or assumptions in the exposure assessment provide adequate protection of infants and childern.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day)= cPAD – (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An acute risk assessment is not applicable because an acute dietary endpoint and dose was not identified in the toxicology data base. Adequate rat and rabbit developmental studies did not provide a dose or endpoint that could be used for acute dietary risk purposes. Additionally, there were no data requirements for acute or subchronic rat neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to glyphosate from food will utilize 1.5 % of the cPAD for the U.S. population, 3.3 % of the cPAD for non-nursing infants (less than one–year old) and 3.2 % of the cPAD for childern (1–6 years old). Based the use pattern, chronic residential exposure to residues of the glyphosate is not expected to pose undue risks to the general population, including infants and childern. In addition, there is potential for chronic dietary exposure to glyphosate in drinking water. After calculating the DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO GLYPHOSATE

Population subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.029960	1.5	0.19	0.0011	69000
Non-nursing infants < 1	0.065430	3.3	0.19	0.0011	19000
Childern (1–6)	0.064388	3.2	0.19	0.0011	19000

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could occur with the use of glyphosate, no toxicological effects have been identified for short-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure

takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could occur with the use of glyphosate, no toxicological effects have been identified for intermediate-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Glyphosate has been classified as a Group E chemical no evidence of carcinogenicity for humans in two animal species. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glyphosate residues.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant commodities. These methods include GLC (Method I in Pesticides Analytical Manual (PAM) II; the limit of detection is 0.05 ppm) and High Performance Liquid Chromatography (HPLC) with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL).

B. International Residue Limits

Codex Maximum Residue Levels (MRLs) exist for barley, dry peas, dry beans, and canola seed at 20, 5, 2, and 10 pp, respectively for glyphosate. Canadian glyphosate MRLs exist for barley, barley milling fractions, peas, beans, and lentils at 10, 15, 5, 2, and 4 ppm, respectively. Mexican glyphosate MRLs exist for barley, peas, and beans at 0.1, 0.2, and 0.2 ppm, respectively. Application of glyphosate as the acid in the United Sates will not cause any new conflicts with existing MRLs.

C. Conditions

There are no conditons of registration associated with this action.

V. Conclusion

Therefore, the tolerance is established for residues of glyphosate, *N*-(phosphonomethyl)glycine by revising the existing regulation to include the ethanolamine salt of glyphosate and to revise the introductory text, remove the introductory text for paragraphs (a)(2) and (a)(3), and the commodity tolerances listed in paragraphs (a)(2) and (a)(3) are reorganized into paragraph (a) in alphabetical order in the table, and revising the text in paragraph (d).

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301034 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 30, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301034, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 15, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.364 is amended by revising paragraphs (a) and (d) to read as follows:

§180.364 Glyphosate; tolerances for residues.

(a) *General.* Tolerances are established for residues of glyphosate, (*N*-(phosphonomethyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate and the ammonium salt of glyphosate in or on the following food commodities:

Commodity	Parts per million
Acerola	0.2
Alfalfa	200.0
Alfalfa, forage	75.0
Alfalfa, fresh and hay	0.2
Alfalfa, hay	200.0
Almonds, hulls	1
Almond hulls	25
Artichokes, Jerusalem	0.2
Asparagus	0.5
Aspirated grain fractions	200.0
Atemoya	0.2
Avocados	0.2
Bahiagrass	200.0
Bananas	0.2
Barley, bran	30
Barley, grain	20
Beets	0.2
Beets, sugar, dried pulp	25
Beets, sugar, roots	10
Beets, sugar, tops	10
Bermudagrass	200.0
Bluegrass	200.0
Breadfruit	0.2
Bromegrass	200.0
Canistel	0.2
Canola, meal	15
Canola, seed	10
Carambola	0.2
Carrots	0.2
Cattle, kidney	4.0
Cattle, liver	0.5
Celeriac	0.2
Cherimoya	0.2

Commodity	Parts per million
Chickory	0.2
Citrus, fruits	0.5
Citrus pulp, dried	1.5
Clover	200.0
Cocoa beans	0.2
Coconut	0.1
Coffee beans	1
Corn, field, forage	1.0
Corn, field, grain	1.0
Corn, field, stover	100.0
Cotton gin byproducts	100.0
Cottonseed	15
Cranberries	0.2
Dates	0.2
Durian	0.2
Fescue	200.0
Figs	0.2
Fish	0.25
Forage grasses	0.2
Forage legumes (except soybeans and peanuts)	0.4
Fruits, small, and berries	0.2
Genip	0.2
Goats, kidney	4.0
Goats, liver	0.5
Grain crops (except wheat, oats, grain sorghum and barley)	0.1
Grapes	0.2
Grasses, forage	0.2(N)
Guavas	0.2
Hogs, kidney	4.0
Hogs, liver	0.5
Horseradish	0.2
Horses, kidney	4.0
Horses, liver	0.5
Jaboticaba	0.2
Jackfruit	0.2
Kiwifruit	0.2
Leafy vegetables	0.2(N)
Legume vegetables (succculent and dried) group (except soybeans)	5
Longan	0.2
Lychee	0.2
Mamy sapote	0.2
Mangoes	0.2
Mangosteen	0.2
Molasses, sugarcane	30.0
Nuts	0.2
Oats, grain	20.0
Oil, palm	0.1
Olives	0.2
Olives, imported	0.1
Orchardgrass	200.0
Papayas	0.2
Parsnips	0.2
Passion fruit	0.2
Peanut, forage	0.5
Peanut, hay	0.5
Peanuts	0.1
Peppermint	200
Persimmons	0.2
Pineapple	0.1
Pistachio nuts	0.2
Pome fruits	0.2
Pomegranates	0.2
Potatoes	0.2
Poultry, kidney	0.5
Poultry, liver	0.5
Radishes	0.2
Rambutan	0.2
Rutabagas	0.2
Ryegrass	200.0
Salsify	0.2
Sapodilla	0.2
Sapote, black	0.2
Sapote, white	0.2
Seed and pod vegetables	0.2(N)
Seed and pod vegetables, forage	0.2(N)
Seed and pod vegetable, hay	0.2(N)
Sheep, kidney	4.0
Sheep, liver	0.5
Shellfish	3.0
Sorghum, grain	15.0
Sorghum, grain, stover	40.0
Soursop	0.2
Soybean, hulls	100.0
Soybeans	20.0
Soybeans, aspirated grain fractions	50.0
Soybeans, forage	100.0
Soybeans, grain	20.0
Soybeans, hay	200.0
Spearmint	200
Stone fruit	0.2
Sugar apple	0.2
Sugarcane	2.0
Sunflower seed	0.1
Sweet potatoes	0.2
Tamarind	0.2
Tea, dried	1.0
Tea, instant	7.0
Timothy	200.0
Tree nut crop group	1.0
Turnips	0.2
Vegetables, bulb	0.2
Vegetables, cucurbit	0.5
Vegetables, fruiting (except cucurbits) group	0.1
Vegetables, leafy, Brassica (cole)	0.2
Wheat, grain	5.0
Wheat, straw	85.0
Wheat milling fractions (excluding flour)	20.0
Wheatgrass	200.0
Yams	0.2

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of glyphosate *N*-(phosphonomethyl glycine) per se resulting from the use of irrigation water containing residues of 0.5 ppm following applications on or around aquatic sites, at 0.1 ppm on the crop groupings citrus, cucurbits, forage grasses, forages legumes, fruiting vegetables, grain crops, leafy vegetables, nuts, pome fruits, root crop vegetables, seed and pod vegetables, stone fruits, and the individual commodities cottonseed, hops, and avocados. Where tolerances are established at higher levels from other uses of glyphosate in or on the subject crops, the higher tolerances should also apply to residues from the aquatic uses cited in this paragraph.

[FR Doc. 00–22168 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–94–3, Notice No. 2]

Policy on the Safety of Railroad Bridges

AGENCY: Federal Railroad Administration (FRA), Department of Transportation, (DOT).

ACTION: Final Statement of Agency Policy.

SUMMARY: FRA issues a final statement of policy for the safety of railroad bridges. FRA establishes suggested criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks. This final statement of policy reflects minor changes following public comment on the interim statement of policy published April 27, 1995, at 60 FR 20654.

DATES: *Effective Date:* The final statement of policy is effective September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590, (Telephone: 202–493–6320), or Nancy Lummen Lewis, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590, (Telephone 202–493–6047).

SUPPLEMENTARY INFORMATION: On April 27, 1995, FRA issued an interim statement of policy on the safety of railroad bridges. Published in the **Federal Register** at 60 FR 20654, the interim statement included a request for comments to be submitted to FRA during a 60-day period following publication. The interim statement detailed the reasons which prompted FRA to adopt this policy, as well as the background information behind its adoption. The notice stated that FRA intended to incorporate the policy statement as an appendix to 49 CFR part 213, reflecting any changes warranted by comments submitted during the comment period. FRA's original intent was to publish the final statement of policy at the same time it issued a final rule to revise the Federal Track Safety Standards found at 49 CFR Part 213. However, because the final statement of policy addresses certain unique issues not shared by the final rule to revise the track standards, FRA decided to publish this final statement of policy separately.

Statutory Authority

The Secretary of Transportation has authority to ''prescribe regulations and issue orders for every area of railroad safety.'' 49 U.S.C. 20101. The Secretary has delegated his authority to FRA. 49 CFR 1.49(m).

Reasons for Adoption of the Bridge Safety Policy

The severity of a train accident is usually compounded when a bridge is involved, regardless of the cause of the accident. FRA must be able to deal effectively with any safety problems involving the structural integrity of railroad bridges. At the same time, FRA must assure that private and public resources are not diverted unnecessarily from railroad inspection and maintenance programs that are also critical to railroad safety.

At one extreme, FRA could respond to bridge safety issues only when accidents occur or when someone contacts the agency about particular concerns. However, such a reactive policy would inhibit FRA's ability to detect impending problems with railroad bridges. At the other extreme, FRA could regulate all aspects of railroad bridge management, including inspection, rating, construction and maintenance. The expense of such an action to the railroad industry and to the Federal government is not justified.

To promote bridge safety, this policy statement includes non-regulatory guidelines to inform railroad managers and all concerned about current good practices related to bridge inspection and management. The guidelines accommodate a wide variety of effective bridge inspection and management methods. Therefore, FRA does not expect that its policy will force railroads to change effective bridge management programs and thus unnecessarily divert resources needed for the functional work of bridge management.

Because FRA believes that a national bridge safety policy is most effective when it is administered consistently throughout the United States, the agency will, upon request, cooperate with states to the fullest extent feasible to resolve railroad bridge safety problems. This cooperation will extend to training of inspectors of state railroad safety agencies, joint investigations and evaluations of bridge conditions, and where necessary, invocation of FRA's enforcement authority.

FRA will revise the guidelines as necessary to accomplish the objectives of the bridge safety program. To that end, FRA will continue to monitor and evaluate the railroads' bridge inspection and management programs to guarantee that those responsible for the safety of bridges continue to meet their obligations. FRA will make its findings available to the public upon request, excluding any proprietary information received and identified as such. Should FRA find through its monitoring that widespread bridge structural problems have developed, it may use the information it has gathered to commence a rulemaking proceeding to further address railroad bridge safety.

Effect of this Statement of Policy

This statement of policy containing guidelines for the proper maintenance of bridge structures is meant to be advisory in nature; it does not have the force of regulations under which FRA ordinarily issues violations and assesses civil penalties.

Even without specific bridge safety regulations, FRA maintains authority to perform safety inspections of any railroad facility and to issue emergency orders under 49 U.S.C. 20104, 49 U.S.C. 20107, and 49 CFR part 209. This authority permits FRA, if necessary, to remove from service or otherwise impose conditions on any railroad operation which, in the judgment of the agency, poses an emergency situation involving a hazard of death or personal injury. For example, on February 12, 1996, FRA issued Emergency Order No. 19, which removed from service a railroad bridge on the Tonawanda Island Railroad near North Tonawanda, New York, after FRA found that the bridge posed an unacceptable risk to the safety of train operations. Likewise, FRA issued Emergency Order No. 22 on December 16, 1999, which removed from service a railroad bridge on the Oregon Pacific Railroad in Milwaukie, Oregon. The bridge in Oregon was satisfactorily repaired, and FRA lifted Emergency Order No. 22 on January 20, 2000.

This final statement of agency policy does not change FRA's statutory emergency order authority with respect to railroad bridge safety. Rather, the guidelines contained herein represent the general criteria against which FRA will evaluate each railroad's bridge inspection and management program.

Public Response to the Interim Policy

A 60-day comment period followed the publication of the Interim Statement of Policy, and FRA received comments from five parties. Those comments were considered in the development of this final policy and are addressed here.

The American Railway Engineering and Maintenance of Way Association (AREMA), in conveying its support of the policy and its associated guidelines, expressed a concern that the policy's reference to AREMA's *Manual for Railway Engineering* in Guideline 5 may lead some to believe that the specifications contained therein represent minimum safety standards. That interpretation was not intended by FRA, and Guideline 5 has been modified to reflect that concern.

The Association of American Railroads (AAR) and the Norfolk Southern Corporation expressed support for the policy, as well as support for AREMA's comments. The AAR also requested clarification of the provisions in Guideline 1 regarding the responsibility for the safety of bridges.

The Federal Track Safety Standards prescribe the track owner as the party responsible for proper maintenance of the tracks. It follows, therefore, that compliance with the track standards necessitates that the track owner also maintain any structure supporting the track, be it a bridge or an earth structure. Where a bridge owner is not the track owner, the bridge owner is responsible to the track owner for the integrity of the bridge. Likewise, the track owner is responsible to other railroads operating over its track for the integrity of both the track and the bridges which support it.

FRA does not consider it necessary that one railroad operating with trackage rights over another should duplicate the bridge management work of the track owner. An operator under trackage rights should be able to accept a general assurance that the owner is maintaining the integrity of its bridges. However, effective communication of load restrictions between the owner and other operating railroads is essential to prevent overloading bridges.

The Brotherhood of Maintenance of Way Employees (BMWE) had earlier petitioned FRA to issue regulations governing bridge safety, including a requirement for displacement and damage detectors. The BMWE cited the specifications of the American Association of State Highway and Transportation Officials (AASHTO) as examples of standards that govern the design, construction, inspection and maintenance of highway bridges. The BMWE recommended that the same type of standards should be applied to railroad bridges.

AASHTO specifications generally have been adopted by highway bridge owners, as the bridge chapters in the AREMA *Manual for Railway Engineering* have been adopted by railroad bridge owners. In fact, railroads frequently use AASHTO specifications for highway bridges which they own, and highway agencies use the AREMA

manual in their projects involving railroad bridges. AASHTO specifications are not regulations, unless they have been adopted as such by a government agency that actually owns and maintains highway bridges. FRA believes that this policy statement, with its reference to the AREMA manual, effectively points interested parties toward standards that are the railroad equivalent of the AASHTO specifications and, in so doing, accomplishes the objective of BMWE's recommendation.

The BMWE also commented that it agreed with FRA's plan to make this policy a part of the Federal Track Safety Standards contained in 49 CFR part 213.

Comments From NYSDOT

The Department of Transportation of the State of New York (NYSDOT) submitted several comments generally calling for more stringent regulations than the guidelines in the present policy. NYSDOT questioned the reliability of the results of the 1992–1993 FRA bridge survey because the FRA track inspectors who conducted the survey are not licensed structural engineers. FRA personnel did not themselves inspect or evaluate the bridges included in the survey. Rather, they observed the railroads' inspectors and engineers conducting the inspections and making the evaluations. They reported their findings in the manner which FRA trained them to use for this project, and an FRA professional bridge engineer, who is licensed and registered in the State of New York, analyzed the data. The FRA track inspectors did not engage in formulating any engineering decisions.

In response to FRA's statement that its bridge survey showed that there have been no fatalities caused by the structural failure of a railroad bridge, NYSDOT stated that it had information concerning a fatality that occurred when a railroad bridge failed in 1976. In a review of the accident records for 1976, FRA found one instance in which a locomotive engineer in Iowa was fatally injured when a railroad trestle was washed out in a flood. The accident was reported to FRA as having been caused by a flood or washout, and not a bridge failure. Upon review of the record, FRA finds that the accident was caused by damage to the bridge by outside sources and not by the structural failure of the bridge.

NYSDOT also responded to FRA's report that 11 of 19 train accidents on bridges occurring since 1983 were caused by external damage to the bridges from wash-outs or from collisions of marine vessels. According to NYSDOT, these accidents should be counted as accidents caused by bridge failure. FRA disagrees. FRA believes that it could perform a more precise analysis of the data by distinguishing between accidents caused by external damage to bridges and accidents resulting from failure of bridges to withstand normal service loads. The Federal Track Safety Standards already address floods and wash-outs by requiring railroads to properly maintain drainage facilities under and adjacent to roadbeds, including bridges. See 49 CFR 213.33. The Track Safety Standards also require in 49 CFR 213.239 that railroads perform special inspections following floods, fire, severe storms, or other occurrences that might have damaged track structure. FRA considers any damage to the track or its supporting structures, including bridges, that renders the track incapable of safely carrying its traffic loads, to come under the provisions of this section of the Track Safety Standards.

NYSDOT commented that railroad bridges, many of which were designed to carry heavy steam locomotives, are now severely loaded by modern 100-ton capacity cars. FRA has found that the railroads understand the phenomenon of structural fatigue and its effect on the longevity of steel structures. Railroads have the advantage of controlling the loads they operate over their bridges, and in most cases, they can determine the loading history of a bridge with sufficient accuracy to permit a valid fatigue evaluation.

NYSDOT commented that FRA does not maintain quantitative data on the nation's railroad bridges, unlike highway agencies which keep detailed quantitative data on highway bridges. Highway agencies need to gather detailed information on those bridges because they are fully responsible for their construction, inspection, maintenance, repair, and safety. However, in the railroad industry, the railroads are responsible for the bridges they own or operate, and they maintain the information necessary for the fulfillment of that responsibility. FRA owns no bridges, and generally does not fund bridge maintenance or construction. The agency therefore does not have the need to expend resources to collect and maintain detailed quantitative data that would duplicate information held by the railroads themselves.

NYSDOT commented that FRA should issue regulations mandating certain requirements for bridge inspection programs. These requirements would include specifications for (1) Diving inspections at set periods, (2) levels of inspection for various types of bridges and bridge components, (3) qualifications and training of inspection personnel, and (4) historical information to be provided to bridge inspectors. FRA does not believe that such regulations are warranted. Rather, these points of concern should be addressed in the guidelines, with the manner of execution left to the determination of the engineer engaged by the bridge owner. FRA believes that specific inspection criteria are best determined on a bridge-by-bridge basis. FRA further believes that it can adequately address individual bridge problems as they arise by exercising its existing safety authority. An example is FRA Emergency Order No. 19 against the Tonawanda Island Railroad bridge in which NYSDOT assisted FRA in collecting information to address specific problems on one particular railroad bridge that was in very poor condition and under highly unusual circumstances. Another example is FRA Emergency Order No. 22 against the Oregon Pacific Railroad. Before issuing that emergency order, FRA, with the help of the Oregon Department of Transportation, gathered information about serious defects in the bridge structure and well as the inadequate repairs the railroad had already made to the bridge.

Differences Between Interim and Final Policies

In addition to the editorial modifications described under the section ''Public Participation,'' as well as other slight editorial modifications, FRA has added three references to earthquakes and seismic activity to reflect recent advances in railroad bridge engineering related to seismic design. This addition is intended to call attention to potential risks to railroad bridges posed by seismic activity in the United States. FRA also has clarified in paragraph (b) of Section 1, ''Responsibility for safety of railroad bridges,'' who is responsible for railroad bridge safety when the owner of the track on a bridge is not the owner of the bridge itself.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies

This statement of policy has been evaluated in accordance with existing regulatory policies. It is considered to be a nonsignificant regulatory action under E.O. 12866 and is a nonsignificant rule under 5(a)(4) of DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because it is advisory only and

does not carry with it the force of law or regulation. For nonsignificant rules, the DOT Regulatory Policies and Procedures ordinarily require an economic evaluation to be placed in the public docket. This evaluation should include an analysis of the economic consequences of the rule, including (if possible) an estimation of the cost and benefits of the rule to the private sector, consumers, and all levels of government. However, such an evaluation is not required if the expected impact of a rule is deemed minimal. Because this statement of policy offers only guidelines to be followed and does not mandate any actions or establish any record keeping requirements, the need for further cost/benefit analysis is not indicated.

Regulatory Flexibility Act

Because this statement of policy is advisory in nature and does not carry with it the force of law or regulation, analysis of it under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) is not required. Nevertheless, in reviewing the economic impact of this statement of policy, FRA concluded that it will not have any measurable impact on small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. Therefore, it is certified that this policy statement will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act of 1996

Because an analysis under the Regulatory Flexibility Act is not required for the final statement of policy, FRA is likewise not required to issue a Small Entity Compliance Guide to summarize the requirements of this rule, pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121).

Paperwork Reduction Act

There are no information collection requirements contained in this statement of policy.

Environmental Impact

FRA has evaluated this statement of policy in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

FRA undertook the survey of railroad bridges because of a perception that the nation's railroad bridges are aging and may pose a significant hazard to public safety. Following the survey, FRA concluded that the vast majority of such bridges across the nation are adequately maintained and do not present a threat to safety. This conclusion is not based upon an assessment of railroad bridge safety for any particular location, nor does it imply that every railroad bridge in every state meets the minimum guidelines. Therefore, it is FRA's intent that this statement of policy should not preclude any state from addressing safety issues concerning railroad bridges within that state.

In stating its intent that this policy statement should not preempt regulatory actions by states, FRA is adhering to the principles of Executive Order 13132 issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. See 64 FR 43,255. Section 3(a) of the Executive Order requires Federal agencies to ''closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of States and * * * carefully assess the necessity for such action.'' In Section 3(b), the Executive Order continues, ''National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' Of course, FRA has the constitutional and statutory authority to issue guidelines addressing railroad bridge safety, but the agency has not found a ''problem of national significance'' of such a dimension to warrant limiting state policymaking discretion in addressing the same subject matter. In light of this conclusion, a Federalism Assessment pursuant to Executive Order 13132 is not required. Nevertheless, FRA has prepared a short Federalism analysis which resides in the docket reserved for this proceeding.

For railroad operations to be conducted safely, the structural integrity of bridges that carry railroad track must be properly maintained. FRA's research reveals that the railroad industry does not have a systemic bridge safety problem. For that reason, FRA adopts a safety policy, rather than regulations, to effect and maintain railroad bridge safety.

List of Subjects in 49 CFR Part 213

Penalties, Railroad Safety, Railroads

Amend Part 213 to read as follows:

PART 213—TRACK SAFETY STANDARDS

1. The authority citation for part 213 is revised to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461; and 49 CFR1.49(m).

2. A new Appendix C is added to part 213 to read as follows:

Appendix C to Part 213—Statement of Agency Policy on the Safety of Railroad Bridges

1. The structural integrity of bridges that carry railroad tracks is important to the safety of railroad employees and to the public. The responsibility for the safety of railroad bridges rests with the owner of the track carried by the bridge, together with any other party to whom that responsibility has been assigned by the track owner.

2. The capacity of a bridge to safely support its traffic can be determined only by intelligent application of engineering principles and the laws of physics. Bridge owners should use, as FRA does, those principles to assess the integrity of railroad bridges.

3. The long term ability of a structure to perform its function is an economic issue beyond the intent of this policy. In assessing a bridge's structural condition, FRA focuses on the present safety of the structure, rather than its appearance or long term usefulness.

4. FRA inspectors conduct regular evaluations of railroad bridge inspection and management practices. The objective of these evaluations is to document the practices of the evaluated railroad and to disclose any program weaknesses that could affect the safety of the public or railroad employees. When the evaluation discloses problems, FRA seeks a cooperative resolution. If safety is jeopardized by a bridge owner's failure to resolve a bridge problem, FRA will use available legal means, including issuance of emergency orders, to protect the safety of railroad employees and the public.

5. This policy statement addresses the integrity of bridges that carry railroad tracks. It does not address the integrity of other types of structures on railroad property (i.e., tunnels or bridges carrying highways) or other features over railroads (i.e., highway overpasses).

6. The guidelines published in this statement are advisory, rather than regulatory, in nature. They indicate those elements FRA deems essential to successful bridge management programs. FRA uses the guidelines when evaluating bridge inspection and management practices.

Guidelines

1. Responsibility for safety of railroad bridges

(a) **Track owner.** The owner of the track on a bridge, or another person assuming

responsibility for the compliance of that track with this Part under provisions of § 213.5, is responsible for ensuring that the bridge is capable of safely carrying all railroad traffic operated on that track, and for specifying the maximum loads that may be operated over the bridge.

(b) **Divided ownership.** Where the owner of the track on a bridge does not own the bridge, the track owner should ensure that the bridge owner is following a program that will maintain the integrity of the bridge. The track owner either should participate in the inspection of the bridge, or should obtain and review reports of inspections performed by the bridge owner. The track owner should maintain current information regarding loads that may be operated over the bridge, either from its own engineering evaluations or as provided by a competent engineer representing the bridge owner. Information on permissible loads may be communicated by the bridge owner either in terms of specific car and locomotive configurations and weights, or as values representing a standard railroad bridge rating reference system. The most common standard bridge rating reference system incorporated in the Manual for Railway Engineering of the American Railway Engineering and Maintenance of Way Association is the dimensional and proportional load configuration devised by Theodore Cooper. Other reference systems may be used where convenient, provided their effects can be defined in terms of shear, bending and pier reactions as necessary for a comprehensive evaluation and statement of the capacity of a bridge.

(c) **Other railroads.** The owner of the track on a bridge should advise other railroads operating on that track of the maximum loads permitted on the bridge stated in terms of car and locomotive configurations and weights. No railroad should operate a load which exceeds those limits without specific authority from, and in accordance with restrictions placed by, the track owner.

2. Capacity of Railroad Bridges

(a) **Determination.** The safe capacity of bridges should be determined by competent engineers using accepted principles of structural design and analysis.

(b) **Analysis.** Proper analysis of a bridge means knowledge of the actual dimensions, materials and properties of the structural members of the bridge, their condition, and the stresses imposed in those members by the service loads.

(c) **Rating.** The factors which were used for the design of a bridge can generally be used to determine and rate the load capacity of a bridge provided:

(i) The condition of the bridge has not changed significantly, and

(ii) The stresses resulting from the service loads can be correlated to the stresses for which the bridge was designed or rated.

3. Railroad Bridge Loads

(a) **Control of loads.** The operating instructions for each railroad operating over bridges should include provisions to restrict the movement of cars and locomotives whose weight or configuration exceed the nominal capacity of the bridges.

(b) **Authority for exceptions.** Equipment exceeding the nominal weight restriction on a bridge should be operated only under conditions determined by a competent engineer who has properly analyzed the stresses resulting from the proposed loads.

(c) **Operating conditions.** Operating conditions for exceptional loads may include speed restrictions, restriction of traffic from adjacent multiple tracks, and weight limitations on adjacent cars in the same train.

4. Railroad Bridge Records

(a) The organization responsible for the safety of a bridge should keep design, construction, maintenance and repair records readily accessible to permit the determination of safe loads. Having design or rating drawings and calculations that conform to the actual structure greatly simplifies the process of making accurate determinations of safe bridge loads.

(b) Organizations acquiring railroad property should obtain original or usable copies of all bridge records and drawings, and protect or maintain knowledge of the location of the original records.

5. Specifications for Design and Rating of Railroad Bridges

(a) The recommended specifications for the design and rating of bridges are those found in the *Manual for Railway Engineering* published by the American Railway Engineering and Maintenance-of-way Association. These specifications incorporate recognized principles of structural design and analysis to provide for the safe and economic utilization of railroad bridges during their expected useful lives. These specifications are continually reviewed and revised by committees of competent engineers. Other specifications for design and rating, however, have been successfully used by some railroads and may continue to be suitable.

(b) A bridge can be rated for capacity according to current specifications regardless of the specification to which it was originally designed.

6. Periodic Inspections of Railroad Bridges

(a) Periodic bridge inspections by competent inspectors are necessary to determine whether a structure conforms to its design or rating condition and, if not, the degree of nonconformity.

(b) The prevailing practice throughout the railroad industry is to inspect railroad bridges at least annually. Inspections at more frequent intervals may be indicated by the nature or condition of a structure or intensive traffic levels.

7. Underwater Inspections of Railroad Bridges

(a) Inspections of bridges should include measuring and recording the condition of substructure support at locations subject to erosion from moving water.

(b) Stream beds often are not visible to the inspector. Indirect measurements by sounding, probing, or any other appropriate means are necessary in those cases. A series of records of those readings will provide the best information in the event unexpected changes suddenly occur. Where such indirect measurements do not provide the necessary assurance of foundation integrity, diving inspections should be performed as prescribed by a competent engineer.

8. Seismic Considerations

(a) Owners of bridges should be aware of the risks posed by earthquakes in the areas in which their bridges are located. Precautions should be taken to protect the safety of trains and the public following an earthquake.

(b) Contingency plans for seismic events should be prepared in advance, taking into account the potential for seismic activity in an area.

(c) The predicted attenuation of ground motion varies considerably within the United States. Local ground motion attenuation values and the magnitude of an earthquake both influence the extent of the area affected by an earthquake. Regions with low frequency of seismic events produce less data from which to predict attenuation factors. That uncertainty should be considered when designating the area in which precautions should be taken following the first notice of an earthquake. In fact, earthquakes in such regions might propagate their effects over much wider areas than earthquakes of the same magnitude occurring in regions with frequent seismic activity.

9. Special Inspections of Railroad Bridges

(a) A special bridge inspection should be performed after an occurrence that might have reduced the capacity of the bridge, such as a flood, an earthquake, a derailment, or an unusual impact.

(b) When a railroad learns that a bridge might have suffered damage through an unusual occurrence, it should restrict train operations over the bridge until the bridge is inspected and evaluated.

10. Railroad Bridge Inspection Records

(a) Bridge inspections should be recorded. Records should identify the structure inspected, the date of the inspection, the name of the inspector, the components inspected, and their condition.

(b) Information from bridge inspection reports should be incorporated into a bridge management program to ensure that exceptions on the reports are corrected or accounted for. A series of inspection reports prepared over time should be maintained so as to provide a valuable record of trends and rates of degradation of bridge components. The reports should be structured to promote comprehensive inspections and effective communication between an inspector and an engineer who performs an analysis of a bridge.

(c) An inspection report should be comprehensible to a competent person without interpretation by the reporting inspector.

11. Railroad Bridge Inspectors and Engineers

(a) Bridge inspections should be performed by technicians whose training and experience enable them to detect and record indications of distress on a bridge. Inspectors should provide accurate measurements and other information about the condition of the

bridge in enough detail so that an engineer can make a proper evaluation of the safety of the bridge.

(b) Accurate information about the condition of a bridge should be evaluated by an engineer who is competent to determine the capacity of the bridge. The inspector and the evaluator often are not the same individual. The quality of the bridge evaluation depends on the quality of the communication between them.

12. Scheduling Inspections

(a) A bridge management program should include a means to ensure that each bridge under the program is inspected at the frequency prescribed for that bridge by a competent engineer.

(b) Bridge inspections should be scheduled from an accurate bridge inventory list that includes the due date of the next inspection.

13. Special Considerations for Railroad Bridges

Railroad bridges differ from other types of bridges in the types of loads they carry, in their modes of failure and indications of distress, and in their construction details and components. Proper inspection and analysis of railroad bridges require familiarity with the loads, details and indications of distress that are unique to this class of structure. Particular care should be taken that modifications to railroad bridges, including retrofits for protection against the effects of earthquakes, are suitable for the structure to which they are to be applied. Modifications should not adversely affect the serviceability of the bridge nor its accessibility for periodic or special inspection.

Issued in Washington, DC on August 22, 2000.

Jolene M. Molitoris,

Administrator.

[FR Doc. 00–22152 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 991207319-9319-01; I.D. 072700A]

International Fisheries; Pacific Tuna Fisheries; Closure of the Purse Seine Fishery for Bigeye Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces a three-month closure of the purse seine fishery on floating objects in the eastern Pacific Ocean, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State under the terms of the Tuna Conventions Act. If a closure earlier than the scheduled closure is required, a subsequent document will be published in the **Federal Register** indicating the date on which the fishery associated with floating objects will close.

DATES: Effective from 12 midnight on September 14, 2000, through 12 midnight December 15, 2000. Comments will be accepted through September 14, 2000.

ADDRESSES: Submit comments to Rebecca Lent, Regional Administrator, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner at 562-980- 4040.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of the regulations at 50 CFR part 300, subpart C, which implement the Tuna Conventions Act (16 U.S.C. 955). The U.S. is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of tunas and tuna-like fishes in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years, and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries.

At its meeting in June 2000, the IATTC adopted a resolution to close the purse seine fishery associated with floating objects (including fish aggregating devices, or FADS) for the period September 15 through December 15, 2000. The area covered by this recommendation is all waters of the eastern Pacific Ocean (EPO) between 40° N. lat. and 40° S. lat. out to 150° W. long. The resolution is intended to ensure overall conservation of the bigeye tuna stock and to ensure that the catch of juvenile bigeye tuna would not adversely affect the stock.

This action replaced the recommendation of IATTC in October 1999 that set a provisional 2000 quota of 40,000 metric tons for bigeye tuna taken by purse seine vessels in the EPO. That quota would have been implemented by prohibiting purse seine sets on all types of floating objects in the Convention Area when the quota was reached.

The Department of State has approved this new recommendation. The reason for choosing to close the fishery on floating objects, is that sets on floating objects are the major strategy the purse seine fishery uses to catch bigeye tuna. Sets on floating objects are generally more likely to catch juvenile bigeye, with the result that future yields from the stock could be jeopardized if juvenile bigeye mortality is excessive. To date in 2000, however, catches of juvenile bigeye tuna in the purse seine fishery have been minimal. The seasonal closure is believed to be sufficient to achieve conservation objectives.

For the reasons stated here and in accordance with the regulations at 64 FR 44428, August 16, 1999, NMFS herein announces that:

No U.S. purse seine fishing vessel may deploy a purse seine net around floating objects in the Convention Area between midnight September 14, 2000, and midnight December 15, 2000.

Classification

This action is authorized by the regulations implementing the Tuna Conventions Act. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is 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 part 300, subpart C and is exempt from review under Executive Order 12866. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C., 601 *et seq.*, are not applicable.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary. The rule authorizing this action provides for quotas agreed to by the IATTC and approved by the Department of State to be effective upon direct notification of the U.S. tuna fishing industry. Providing prior notice and an opportunity for public comment would serve no useful purpose. The AA finds for good cause under 5 U.S.C. 553(d)(3) that a 30-day delay in effectiveness for this 2000 quota would be contrary to the public interest. Such a delay could prevent the

quota from being in place before it is exceeded and the fisheries closed.

Authority: 16 U.S.C. 951-961 and 971 *et seq.*

Dated: August 17, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–22204 Filed 8–29–00; 8:45 am]

Billing Code: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000706201-0201-0401; I.D. 060700A]

RIN 0648-AO00

Fisheries of the Exclusive Economic Zone Off Alaska; Removal of Vessel Moratorium in the GOA and BSAI; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment; correction.

SUMMARY: This document contains a correction to the final rule removing obsolete text implementing the Vessel Moratorium Program (VMP) that was published in the **Federal Register** on July 21, 2000.

DATES: Effective July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on July 21, 2000 (65 FR 45316), to remove obsolete VMP text, and to clarify, and simplify existing text. In § 679.2, under the definition of ''Directed fishing'' in paragraph (3), the phrase ''Applicable through July 20, 2000'' was in error and is corrected to read ''Applicable through January 16, 2001''.

Correction

In the final rule, technical amendment published in 65 FR 45316, July 21, 2000, FR Doc. 00-18564, make the following corrections:

PART 679—[CORRECTED]

§ 679.2 [Corrected]

On page 45317, in the second column, in § 679.2 under the definition of ''Directed fishing'', correct the first line of paragraph (3) by removing ''(Applicable through June 20, 2000)'' and adding in its place ''(Applicable through January 16, 2001)''.

Dated: August 24, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–22200 Filed 8–29–00; 8:45 am]

Billing Code: 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 169
Wednesday, August 30, 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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 28

Personnel Appeals Board; Procedural Rules

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Proposed rule.

SUMMARY: The General Accounting Office Personnel Appeals Board proposes to amend its regulations to permit charging parties to bring their cases directly to the Board after the passage of 180 days from the filing of the charge, if the Board's General Counsel has not yet completed the investigation of the charge and issued a Right to Appeal Letter. This amendment would conform Board procedures with those of other agencies that hear employment-related appeals. The Board invites public comments on this proposed change.

DATES: Comments must be received on or before October 30, 2000 in order to be considered.

ADDRESSES: Comments may be mailed to: Clerk, General Accounting Office Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548. Comments may also be submitted by facsimile transmission to 202–512–7525.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, 202–512–6137.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Appeals Board is authorized by Congress to hear and decide certain employment-related cases brought by GAO employees. Some of the matters that may be heard by the Board include: appeals from removals and suspensions for more than 14 days, allegations that agency officials have engaged or are engaging in prohibited personnel practices, claims of employment discrimination based on race, color, religion, age, sex, national origin, political affiliation, marital status, or disability, and cases concerning the right of employees to engage in collective bargaining. The Board performs for GAO employees the functions performed in the executive branch by the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority.

In order to bring a case before the Board, an employee must first file a charge with the Board's General Counsel. (The only exception to this rule is for cases involving a Reduction in Force.) The General Counsel investigates the charge and determines whether there are reasonable grounds to believe that the employee's rights have been violated. At the end of the investigation, the General Counsel issues to the employee a ''report and recommendation'' that explains the results of the investigation. If the General Counsel finds that there are reasonable grounds to believe that the employee's rights have been violated, then the General Counsel offers to represent the employee in a proceeding before the Board. If the General Counsel does not find ''reasonable grounds,'' the General Counsel may not represent the employee. The employee, however, may still bring the case to the Board by representing him- or herself, or by obtaining private representation. Accompanying the report and recommendation, whether favorable or unfavorable, is a ''Right to Appeal'' Letter which permits the employee to file a petition for review with the Board.

Under the Board's present regulations, an employee may not bring his or her complaint to the Board until the General Counsel's investigation is completed and the employee has received a ''Right to Appeal'' Letter. The only exception is for employees separated as a result of a Reduction in Force. The Board's procedures contrast with the procedures in effect at other agencies that hear employment-related appeals. A number of other agencies provide a means for employees to ''opt-out'' of the investigative phase and proceed directly to the hearing stage after they have waited a certain period of time. For example, under the regulations of the Equal Employment Opportunity Commission (EEOC), private employees do not have to await the completion of the EEOC investigation before taking their cases to court. After the passage of 180 days, an employee may request a ''right to sue'' notice from the EEOC and may then have the case heard in federal district court. See 29 CFR 1601.28. Similarly, federal employees in the executive branch do not have to wait indefinitely for the conclusion of the agency investigation into their equal employment opportunity complaints. If the employing agency has not completed the investigation within 180 days, then the employee may immediately request a hearing on the complaint. See 29 CFR 1614.108(g). The Merit Systems Protection Board (MSPB) also allows employees complaining of discrimination to request a hearing if they have waited for 120 days and have not yet received a decision from their agency on their complaint. See 5 CFR 1201.154(b)(2). In case alleging retaliation against whistleblowers, an employee may request a hearing before the MSPB if the Office of Special Counsel has not completed its investigation of the matter within 120 days. See 5 CFR 1209.5(a)(2). Within GAO itself, the agency permits employees to file appeals with the Board concerning equal employment opportunity cases, if GAO has not completed its investigation of the matter within 120 days, or to file a civil action in federal district court if such as case investigation has not been completed within 180 days. See GAO Order 2713.2 ch. 6, ¶¶2, 4 (Dec. 2, 1997).

The Board believes that the approach taken by these agencies is a reasonable and fair one. It therefore proposes to adopt a similar approach for cases within its jurisdiction. Under the proposed rule set forth below, GAO employees will have the option of bringing their cases directly to the Board if 180 days have passed and the Board's General Counsel has not yet completed the investigation and issued a ''Right to Appeal'' Letter concerning their case. If the proposal is adopted, no employee will have to wait for more than 180 days to have the opportunity to present his or her case to an administrative judge.

The proposed amendments do not require an employee to file with the Board as soon as the 180-day period has expired. An employee would still retain the right to wait for the General Counsel to complete the investigation, before going forward. The proposed regulation gives employees a choice: after 180 days they may either go directly to the Board

or wait for the conclusion of the investigation.

Under the proposed regulations, certain consequences flow from an employee's decision to file a petition for review with the Board before the completion of the General Counsel's investigation. First, the investigation by the Board's General Counsel would be terminated as soon as the employee files a petition for review with the Board. The General Counsel would not gather any further evidence after that point, and the employee would not receive a report from the General Counsel analyzing the facts or law relevant to the employee's case. Second, the Board's rules only permit the General Counsel to represent employees before the Board if the General Counsel completes the investigation and finds ''reasonable grounds'' to believe that the charge is true. Under the proposed regulations, therefore, an employee who ''opts out'' of the investigation after 180 days, and files directly with the Board, would forego the opportunity to have the General Counsel present his or her case to the Board. Such an employee could either represent him- or herself, or obtain private representation.

The Board believes that these consequences are necessary features of its proposed regulation. While the Board wishes to extend a choice to employees, it does not believe that it would be justifiable to permit employees to go forward before both the General Counsel's Office and the Board simultaneously. Nor would it be appropriate to permit an employee to be represented at public expense in the absence of a finding of reasonable cause by the General Counsel

List of Subjects in 4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations.

For the reasons stated in the foregoing preamble, the General Accounting Office Personnel Appeals Board proposes to amend 4 CFR Chapter I, Subchapter B, Part 28 as follows:

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

1. The authority citation for Part 28 continues to read as follows:

Authority: 31 U.S.C. 753.

2. Amend § 28.12 by adding a new paragraph (g) to read as follows:

§ 28.12 General Counsel procedures.

* * * * *

(g) If 180 days have elapsed since the filing of the charge, and the General Counsel has not completed the investigation and issued a Right to Appeal Letter, the charging party may bring his or her case directly to the Board by filing a petition for review in accordance with § 28.18. If a charging party exercises this option to file a petition for review with the Board without waiting for the completion of the investigation, the General Counsel shall not represent the charging party in proceedings before the Board. The charging party may represent him- or herself or obtain other representation. The General Counsel shall close the investigation of the charge upon being notified by the Clerk of the Board that the charging party has filed a petition for review with the Board under this paragraph (g).

3. Amend § 28.18 by revising paragraphs (a) and (b) to read as follows:

§ 28.18 Filing a petition for review with the Board.

(a) *Who may file.* Any person who is claiming to be affected adversely by GAO action or inaction that is within the Board's jurisdiction under subchapter IV of chapter 7 of title 31, United States Code, or who is alleging that GAO or a labor organization engaged or is engaging in an unfair labor practice, may file a petition for review if one of the following is met:

(1) The person has received a Right to Appeal Letter from the Board's General Counsel; or

(2) At least 180 days have elapsed from the filing of the charge with the Board's General Counsel and the General Counsel has not issued a Right to Appeal Letter; or

(3) The person was separated due to a Reduction in Force and chooses to file an appeal directly with the Board, without first filing with the Board's General Counsel, as provided in § 28.13.

(b) *When to file.* (1) Petitions for review filed pursuant to paragraph (a)(1) of this section must be filed within 30 days after service upon the charging party of the Right to Appeal Letter from the Board's General Counsel.

(2) Petitions for review filed pursuant to paragraph (a)(2) of this section may be filed at any time after 180 days have elapsed from the filing of the charge with the Board's General Counsel, provided that the General Counsel has not issued a Right to Appeal Letter concerning the charge.

(3) Petitions for review filed pursuant to paragraph (a)(3) of this section must be filed within 30 days after the effective date of the separation due to a Reduction in Force.

* * * * *

Michael Wolf,

Chair, Personnel Appeals Board, General Accounting Office.

[FR Doc. 00–22080 Filed 8–29–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers & Harland Ltd. Models SC–7 Series 2 and SC–7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all Short Brothers & Harland Ltd. (Shorts) Models SC–7 Series 2 and SC–7 Series 3 airplanes. The proposed AD would have required you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD was the result of reports of in-flight incidents and an accident (on airplanes other than the referenced Shorts airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. Since issuing this NPRM, we have found that all of the affected airplanes incorporate a freezing point fluid system. These airplanes do not have pneumatic deicing boots. Therefore, we have determined that the unsafe condition defined in the NPRM does not exist on these airplanes and we are withdrawing the NPRM.

ADDRESSES: You may look at information related to this action at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry E. Werth, Airworthiness Directive Coordinator, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4147; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What action has FAA taken to date? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes that are equipped with pneumatic deicing boots. The proposal was published in the **Federal Register** as an NPRM on October 12, 1999 (64 FR 55197). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first sign of ice accumulation on the airplane.

Was the public invited to comment? The FAA invited interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule.

What additional information has FAA found? The FAA has found that all of the affected airplanes incorporate a freezing point fluid system. These airplanes do not have deice boots. Therefore, FAA has determined that the unsafe condition defined in the NPRM does not exist on these airplanes.

The FAA's Determination

What is FAA's final determination on this issue? Based on the above information, we have determined that there is no need for the NPRM, Docket No. 99–CE–48–AD, and that we should withdraw it.

Withdrawal of this NPRM does not prevent us from issuing another notice in the future, nor will it commit us to any course of action in the future.

Regulatory Impact

Does this AD involve a significant rule or regulatory action? Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws the notice of proposed rulemaking, Docket No. 99–CE–48–AD, published in the **Federal Register** on October 12, 1999 (64 FR 55197).

Issued in Kansas City, Missouri, on August 23, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22125 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–46–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all Raytheon Aircraft Company (Raytheon) 90, 99, 100, 200, 300, 1900, and 2000 series airplanes. The proposed AD would have required you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD was the result of reports of in-flight incidents and an accident (on airplanes other than the referenced Raytheon airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. Raytheon has demonstrated that the design of the affected airplanes, including the language currently in the AFM, is adequate to address the conditions identified in the proposed AD for these airplanes. Therefore, AD action is not necessary to address the conditions on these airplanes and we are withdrawing the NPRM.

ADDRESSES: You may look at information related to this action at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry E. Werth, Airworthiness Directive Coordinator, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4147; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What action has FAA taken to date? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Raytheon 90, 99, 100, 200, 300, 1900, and 2000 series airplanes that are equipped with pneumatic deicing boots. The proposal was published in the **Federal Register** as an NPRM on October 12, 1999 (64 FR 55188). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first sign of ice accumulation on the airplane.

Was the public invited to comment? The FAA invited interested persons to participate in the making of this amendment. We received a comment on the proposed AD from Raytheon. Our analysis and disposition of this comment follow:

Comment Disposition

What is the commenter's concern? Raytheon provides data it believes demonstrates that the design of the affected airplanes, including the language currently in the AFM, is adequate to address the conditions identified in the proposed AD for these airplanes. Therefore, Raytheon requests that FAA withdraw the NPRM.

What is FAA's response to the concern? After evaluating the data that Raytheon submitted, we have determined that the design of the affected airplanes, including the language currently in the AFM, is adequate to address the conditions identified in the proposed AD for these airplanes. We will withdraw the NPRM per the Raytheon request.

The FAA's Determination

What is FAA's final determination on this issue? Based on the above information, we have determined that there is no need for the NPRM, Docket No. 99–CE–46–AD, and that we should withdraw it.

Withdrawal of this NPRM does not prevent us from issuing another notice in the future, nor will it commit us to any course of action in the future.

Regulatory Impact

Does this AD involve a significant rule or regulatory action? Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws the notice of proposed rulemaking, Docket No. 99–CE–46–AD, published in the **Federal Register** on October 12, 1999 (64 FR 55188).

Issued in Kansas City, Missouri, on August 23, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22124 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–265–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 188A and 188C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model 188A and 188C series airplanes. This proposal would require a revision of the Airplane Flight Manual (AFM) to add procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated. This action is intended to prevent incapacitation of the flightcrew as a result of lack of oxygen and consequent loss of control of the airplane due to absence of AFM procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated.

DATES: Comments must be received by October 16, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–265–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 be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–265–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063 fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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 2000–NM–265–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–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 series airplane operating under part 135 of the Federal Aviation Regulations (14 CFR part 135) departed Orlando International Airport enroute to Dallas, Texas. Air traffic control lost communication with the airplane near Gainsville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes indicated that the windows of the Model 35 series airplane were apparently frosted over and prevented the chase airplane flightcrews from observing the interior of the Model 35 series airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 series airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35/36 series airplanes do not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is

activated. Additional review has found that the AFM's of Model 35A and 36A series airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFM's do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew and loss of control of the airplane.

A review of the emergency procedures in the AFM for Lockheed Model 188A and 188C series airplanes revealed that those AFM's also did not contain the requirement for the flightcrew to immediately don emergency oxygen masks. Therefore, all Lockheed Model 188A and 188C series airplanes may be subject to the same unsafe condition as described above.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Emergency Procedures Section of the AFM to provide the flightcrew with appropriate and timely actions in response to activation of the cabin altitude warning horn.

Cost Impact

There are approximately 75 Model 188A and 188C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 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 actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,920, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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:

Lockheed: Docket 2000–NM–265–AD.

Applicability: All Model 188A and 188C series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew and consequent loss of control of the airplane due to delays in donning oxygen masks in response to the activation of the cabin altitude warning horn; accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD, revise the Emergency Procedures Section of the FAA–Approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Low Cabin Pressure Warning Light Comes On and Horn Starts Blowing

a. Oxygen Masks—Don. Select 100% oxygen.
b. If conditions dictate, initiate emergency descent.
c. Check cabin differential pressure gage.
   1. If differential pressure is below 13.34 + 0.30 in. Hg, lower cabin altitude selector wheel.
   2. If differential pressure is at 13.34 + 0.30 in. Hg, descend to lower aircraft altitude.

Note: Warning horn can be silenced with cabin altitude warning horn switch.''

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permit

(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.

Issued in Renton, Washington, on August 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22123 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Child-Resistant Packaging for Certain Over-The-Counter Drug Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is proposing a rule to require child-resistant (CR) packaging on drugs approved by the Food and Drug Administration (FDA) for over-the-counter (OTC) sale that contain active ingredients previously available only in prescription drugs. Current Commission regulations require CR packaging for most oral drug products containing prescription-only active ingredients. However, at present, there is no general requirement for CR packaging of such drug products in forms subsequently approved by the FDA for OTC sale.

The Commission is also proposing to revoke the current prohibition on granting a petition for an exemption from a CR packaging requirement prior to FDA approval of the drug product in question.

The Commission takes these actions under authority of the Poison Prevention Packaging Act of 1970, as amended.

DATES: The Office of the Secretary must receive comments on this proposal on or before November 13, 2000.

ADDRESSES: Mail comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or hand deliver them to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301) 504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477 ext. 1196.

SUPPLEMENTARY INFORMATION:

A. Background

1. Current Approach to CR Packaging Requirements

The Poison Prevention Packaging Act, 15 U.S.C. 1471–1476, was enacted to protect children from serious personal injury or illness resulting from handling, using, or ingesting hazardous substances. Under the PPPA the CPSC can require CR packaging of hazardous household chemicals, including drug products. The CPSC regulations currently require CR packaging of all oral prescription drug products that have not been specifically exempted from that requirement. 16 CFR 1700.14(a)(10).

In contrast, OTC drug products, also referred to as nonprescription drug products, are not now regulated as a class under the PPPA. However, a number of specific OTC drug products have been required by Commission regulation to have CR packaging. These drug products and the effective dates of the CR requirements are: (1) Aspirin (1972), (2) liquid methyl salicylate (1972), (3) iron-containing drug products (1978), (4) acetaminophen (1980), (5) diphenhydramine (1984), (6) ibuprofen (1992), (7) loperamide (1993), (8) lidocaine (1996), (9) dibucaine (1996), (10) naproxen (1996), (11) ketoprofen (1997), and (12) minoxidil (1999).

Diphenhydramine, ibuprofen, loperamide, naproxen, and ketoprofen were active ingredients available originally only in oral dose prescription drug products.[1] Drug products containing them therefore required CR packaging under the Commission's general oral prescription drug product CR packaging regulation. The FDA subsequently approved these active ingredients for use in OTC drug products at specific dosage levels. The OTC forms were not subject to the Commission's CR packaging requirement for oral prescription drug products. The CPSC conducted a rulemaking and promulgated a separate regulation to require CR packaging for OTC products containing each of these active ingredients.

2. The Limited Effect of FDA Approval of an OTC-Switch

The FDA approves drug products containing a single active ingredient or a combination of active ingredients for sale in the United States. This includes approval for sale directly to the consumer in OTC product formulations. The primary responsibility of the FDA with respect to OTC drug products is to assure that they are safe and effective when self-administered by a consumer in a proper manner. The FDA does not base granting of OTC status on whether a drug product would be toxic to a child if unintentionally ingested. The FDA confirmed this in a letter to CPSC staff dated October 7, 1998 stating that ''approval of an OTC switch does not in any way imply that FDA has concluded that the product does not continue to need child-resistant packaging.'' A copy of the FDA letter is available in the docket for this rulemaking.

3. Frequency of OTC-Switches

Since 1976, the FDA has permitted many drug products to be sold OTC. According to the Consumer Healthcare Products Association (CHPA) website, ''more than 600 OTC products on the market today use ingredients or dosages available only by prescription just 20 years ago. ''[2] Trade press articles speculate that this trend will continue.[3] The CHPA has compiled a table listing 80 drug products that have been granted OTC status since 1976.[4] Of the 80 listings in the table, 22 are oral drug products that were previously available by prescription. The other listings are topical drug products, new uses, or new formulations for existing OTC drug products, or OTC-approved drug products that were not previously available as prescription products.

The FDA is currently evaluating whether other drug products or drug product categories should be OTC-switched. That agency conducted a two-day public hearing in late June of this year on a spectrum of OTC issues, including OTC switches. In the April 27, 2000 **Federal Register** notice announcing the hearing, 65 FR 24704–6, the FDA stated that it had ''received comments suggesting that a number of other types of drugs should be considered for OTC status.'' The FDA notice indicated that the types of drug products suggested for OTC status include diuretics, antihypertensive agents, cholesterol-lowering drug products, antidiabetic drug products, treatments for osteoporosis, drug products for stomach problems, *etc.*

4. OTC-Switched Drug Products Currently Subject to CR Packaging Requirements

To date, the Commission has required CR packaging for OTC products containing 6 of the 22 oral prescription active ingredients that have also been approved for sale in OTC products. The six active ingredients that currently

[1] The meanings of the terms active ingredient and drug product as used in this rulemaking are the same as the meanings assigned to those terms in the drug product regulations of the FDA. The FDA drug product regulations define active ingredient as ''any component (of a drug product) that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the body of humans, but does not include intermediates used in the synthesis of such ingredient.'' 21 CFR 201.66 (1999). The FDA regulations define drug product as ''a finished dosage form, for example, tablet, capsule, or solution, that contains a drug substance (active ingredient), generally, but not necessarily, in association with one or more other ingredients.'' 21 CFR 314.3 (1999). Drug product also encompasses a product containing more than one active ingredient. 21 CFR 300.50 (1999).

[2] The Uniform Resource Locator (URL) for the CHPA website is: www.ndmainfo.org

[3] Levy, S., Several Prescription Candidates Reported Ripe for OTC Switching, Drug product Topics, November 16, 1998, p.51.

[4] The CHPA Table is available on that organization's website at: www.ndmainfo.org/pdfs/Switch%20List/pdf

require CR packaging in OTC products, the date of OTC approval by the FDA, and the effective date of the CR packaging requirements are listed in Table 1. The other 16 active ingredients are discussed below.

TABLE 1: PRESCRIPTION ACTIVE INGREDIENTS SWITCHED TO OTC STATUS THAT REQUIRE CR PACKAGING

Active ingredient	Year OTC-switched	Year CR packaging effective
Diphenhydramine HCL	1982	1984
Diphenhydramine monocitrate	1982	1985
Ibuprofen	1984	1992
Loperamide	1988	1993
Naproxen sodium	1994	1996
Ketoprofen	1995	1997

5. History of CPSC Regulation of OTC–Switched Oral Drug Products

In the past, CPSC staff focused primarily on ingestion data to recommend to the Commission what products should be in CR packaging. In the late 1970s the FDA allowed the OTC sale of several antihistamines that were previously available only by prescription. Of these, diphenhydramine hydrochloride was the first OTC-switched active ingredient regulated by the CPSC under PPPA authority. Then, in 1982, the FDA approved the monocitrate salt of diphenhydramine for OTC sale. The existing diphenhydramine hydrochloride CR packaging regulation was then amended to cover all diphenhydramine salts.

In 1984, the CPSC staff evaluated ingestion data related to ibuprofen. Products containing ibuprofen were granted OTC status during that year. At that time, the poisoning data were limited and Commission staff did not recommend CR packaging. The two companies that first marketed OTC ibuprofen products used CR packaging voluntarily on some package sizes.

In 1989, CPSC staff revisited ibuprofen toxicity because ibuprofen had become widely available. Not all companies were using CR packaging and serious injuries to children resulted. The Commission issued a rule requiring CR packaging for all of these products. 16 CFR 1700.14(a)(20). Companies that had been marketing their products in non-CR packaging changed their packaging accordingly.

The experience with diphenhydramine and ibuprofen resulted in a change in the staff's approach to recommendations for CR packaging for OTC-switched products. Rather than wait for deaths or injuries to children, Commission staff has become more proactive in recommending CR packaging requirements for OTC drug products. For the past several years the staff has focused on the potential toxicity of active ingredients contained in drug products that are going to be switched instead of waiting for poisonings to occur after a product is released and marketed for OTC sale. The staff has made the evaluation of potential switched drug products the first priority. As a result, separate regulations for products containing loperamide, naproxen, and ketoprofen were promulgated by the Commission soon after OTC status for products containing each of these active ingredients was granted by the FDA.

CPSC staff monitors FDA's activities concerning approval of switched OTC drug products. The staff attends FDA advisory panel meetings when possible, to better understand any issues about a potential switch and the likelihood of approval of OTC status by the FDA. The FDA is not bound to accept the panel's recommendations regarding OTC switches, though in most cases the FDA does. The review of the potential toxicity to young children of the active ingredient or ingredients in the product then becomes a priority for the CPSC staff.

To avoid expending the CPSC's limited resources if the FDA does not approve OTC sale of the drug product, Commission staff waits for FDA approval before proceeding with a review. The proposed rule would eliminate this lag between FDA approval of an OTC-switch and the CPSC requirement to maintain CR packaging.

The 16 oral prescription active ingredients that were switched to OTC status and are not currently required to have CR packaging are pseudoephedrine HCL, pseudoephedrine sulfate, phenylpropanolamine HCL, clemastine fumarate, brompheniramine maleate, chlorpheniramine maleate, dexbrompheniramine maleate, triprolidine HCL, dexchlorpheniramine maleate, doxylamine succinate, pyrantel pamoate, chlophedianol HCL, famotidine, cimetidine, ranitidine, and nizatidine. In conjunction with this rulemaking, CPSC staff has preliminarily assessed the toxicity of eight of these. Based on their toxicity, the staff would recommend CR packaging for drug products containing pseudoephedrine HCL, pseudoephedrine sulfate, phenylpropanolamine HCL, and clemastine fumarate.

The four active ingredients for which the CPSC staff would not recommend CR packaging are members of the same family of antihistamines used to reduce stomach acid. These are famotidine, cimetidine, ranitidine, and nizatidine. These substances do not have the degree of toxicity associated with antihistamines used to treat cold symptoms.

Five antihistamine active ingredients that are currently under preliminary review by Commission staff are brompheniramine maleate, chlorpheniramine maleate, dexbrompheniramine maleate, triprolidine HCL, and dexchlorpheniramine maleate. These antihistamines are related in structure and activity to diphenhydramine, which is currently subject to a CR packaging requirement.

This rulemaking proposal would not retrospectively require CR packaging of FDA-approved drug products containing the 16 OTC-switched active ingredients not currently subject to CR packaging requirements. CPSC staff continues to evaluate these substances as time and other priorities permit. Many drug products containing these active ingredients are in CR packaging because they contain other active ingredients that require CR packaging, for example pseudoephedrine with ibuprofen or an antihistamine with acetaminophen or aspirin. In addition, the Commission is aware of some OTC products that are voluntarily marketed in CR packaging.

B. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act authorizes the Commission to establish standards for the ''special packaging'' of any household substance if: (1) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. 15 U.S.C. § 1472(a).

CR or ''special'' packaging must be designed or constructed to be: (1) Significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time; and (2) not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR

packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321. 15 U.S.C. 1471(2)(B). The Commission has promulgated performance requirements for special packaging. 16 CFR 1700.15 and 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the product in CR packages of a popular size, and the non-CR package bears conspicuous labeling stating ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

C. The Proposed Rule

1. General Approach

The Commission is proposing a rule to require that CR packaging requirements applicable to any oral prescription drug product continue to apply when that drug product or any other drug product containing an active ingredient of that product is granted OTC status by the FDA. This rule will provide children with the same protection when a drug product is more widely available as an OTC preparation that they had when it was available only by prescription. The rule would eliminate the possibility of a drug product being available in non-CR packaging for an extended time before the CR packaging requirement is reimposed by Commission rulemaking. The need to continue to protect children does not diminish when an oral prescription drug product is granted OTC status. As noted above, a decision by the FDA to grant OTC status for a prescription drug product does not include a finding that there is a lack of toxicity to a child if the drug product is accidentally ingested in an unpredictable amount, which could be the entire contents of the OTC product package. The active ingredient(s) in the drug product still have the same toxicity, whether the drug product is in prescription or OTC form.

2. Additional Uses, Forms, and Combinations of OTC-Switched Drug Products

The FDA can approve a new usage or a new dosage form of a previously-approved OTC-switched drug product. The proposed rule would require that the new use or new dose be sold in CR packaging even if the new use or dose was not approved when the drug product was only available by prescription. This is consistent with the current regulatory approach for a new use for an oral OTC product that is already subject to a CR packaging requirement. For example, after February 11, 1985, any oral product that contained more than the equivalent of 66 mg. of diphenhydramine base was required to be in CR packaging. At that time, diphenhydramine was in OTC sleep aids and hay fever preparations. In 1987, when diphenhydramine was approved by the FDA for OTC sale as an oral antiemetic drug product, no further CPSC regulatory action was necessary. This same focus on the active ingredient itself rather than the approved usage is the approach of the proposed rule. If an oral prescription drug product were granted OTC status by the FDA it would automatically be subject to a CR packaging requirement under the proposed rule. If the FDA then approved another OTC drug product containing some or all of the active ingredients in that drug product, the new drug product would also automatically be subject to the CR packaging requirement.

The proposed rule would not extend CR packaging requirements to OTC-switched products that are not oral formulations, even if they contain any of the same active ingredients as an oral preparation. Formulations other than oral, such as topical preparations, or transdermal patches would still be regulated individually and therefore not affected by this proposed rule.

In some cases, after a prescription drug product is approved for OTC sale by the FDA, other forms, dosages, or combinations containing some or all of the active ingredients in that drug product will also be approved for OTC sale. These combinations or forms may not have existed when the drug was available by prescription only. This proposal would cover these situations. For example, loperamide was granted OTC status by the FDA in 1988. In 1993, the CPSC required CR packaging for any oral product that contained more than 0.045 mg of loperamide. In 1997, the FDA approved the combination of loperamide and simethicone in an OTC product. This combination was never a prescription product. However, the combination OTC product is subject to the CR packaging requirement because the loperamide rule is not limited to the original prescription formulation.

3. Change in Dosage Between Prescription and OTC Drugs

The prescription version of a drug product may be available in different dosages, strengths, and forms. However, the FDA may place restrictions on the allowed level of an active ingredient available for use in an OTC drug product. Several different scenarios exist. First, the active ingredient may be sold in an OTC drug product at the lowest prescription dosage. This is true for many OTC-switched drug products, including the antihistamines. Second, the active ingredient may be sold OTC at the prescription strength but with a lower total daily allowable dose. This is the case for OTC loperamide products. Lastly, a lower dosage of the active ingredient may be developed for the OTC drug product. OTC ibuprofen and naproxen are examples.

This proposal would require CR packaging for any OTC oral drug product containing an active ingredient that was available by prescription even if the OTC dosage is lower than the prescription strength. This is consistent with the approach of the CPSC's oral prescription drug product CR packaging regulation, which applies to all dosages approved by the FDA for prescription sale. This recognizes the reality that absent CR packaging, the ''dose'' potentially available to a child is the entire package contents.

The Commission has issued rules for individual OTC switched drug products that are only available at a lower dose than the prescription strength product. The Commission's experiences with ibuprofen and naproxen demonstrate that toxic amounts of the active ingredients are available from a single OTC product container even at these new lower dosages.

4. Exemptions

An exemption procedure exists for PPPA-regulated products that do not pose a risk of serious injury or illness to children or for which CR packaging is not technically feasible, practicable, or appropriate. 16 CFR Part 1702. Companies petition the Commission to exempt products by submitting data, described in 16 CFR Part 1702, to support a conclusion either that: (1) the drug product will not cause serious injury or illness, or (2) it is not technically possible to develop and produce CR packaging for the drug product. An exemption petition is processed by informal, notice and comment rulemaking. Currently, 18 oral prescription drug products and several OTC formulations of aspirin, acetaminophen, and iron have been exempted from the CR packaging requirements. 16 CFR 1700.14. Under the proposed rule, this exemption procedure would remain available to manufacturers of OTC-switched products.

5. Timing of Exemption Petitions

The Commission's current CR packaging regulations specify that the Commission shall deny an exemption petition if the FDA has not approved the new drug product. 16 CFR 1702.16(b). Therefore,at present, a company seeking an exemption for a newly approved drug product must either market in CR packaging, delay marketing until the Commission acts on the petition, or request a stay of enforcement to allow marketing in non-CR packaging while the Commission considers the petition.

A post-marketing change in packaging of an approved OTC drug product may be more complex for the manufacturer than simply buying different packaging and modifying the packaging equipment. In some cases, the FDA must approve the new packaging before the drug product can be marketed.[5] Stability testing of the product in the new package must be completed and the results approved by the FDA before the product can be marketed in the new package.

Accordingly, the Commission is proposing to revoke 16 C.F.R. 1702.16(b) so that exemption petitions can be submitted and considered by the Commission earlier in the process, *i.e.*, before FDA approval. This would enable manufacturers to seek an exemption from the CR packaging requirements and have a Commission decision prior to submitting an application to the FDA for approval of an OTC or prescription drug product.

6. Listing of OTC-Switched Drug Products Subject to CR Packaging

To assist consumers and industry in identifying which OTC-switched drug products require CR packaging, the Commission intends to maintain a list of such drug products as an appendix to the regulations at 16 CFR 1700.14. As the FDA approves OTC-switches, the list would be updated periodically by publishing a revised appendix in the **Federal Register**.

D. Findings

1. Hazard to Children

Before issuing a rule requiring CR packaging, the Commission must find that the degree or nature of the hazard to children in the availability of OTC-switched drug products by reason of their packaging is such that special packaging is required to protect children from serious injury or illness from handling, using, or ingesting the drug products. 15 U.S.C. 1472(a)(1). These statutory findings were made when the rule requiring CR packaging for oral prescription drug products was promulgated in 1973. 38 Fed. Reg. 9,431.

OTC-switches did not begin to occur until several years after the 1973 rule requiring CR packaging for oral prescription drug products was promulgated. The first such switches were carried out in response to recommendations from an FDA Advisory Panel's review of over-the-counter drug products.

The need to continue to protect children remains when oral prescription drug products are granted OTC status. As noted previously, a decision by the FDA to grant OTC status for a prescription drug product is not a determination that there is no toxicity to a child if the drug product is accidentally ingested. The active ingredient(s) contained in the drug product have the same toxicity whether in prescription or OTC form. The issue is whether drug products switched to OTC status at a lower dosage than was available by prescription are still hazardous to young children. This is the case since absent CR packaging, the ''dose'' available to a child can be the entire contents of the OTC product package. The Commission's experiences with ibuprofen and naproxen demonstrate that toxic amounts of the active ingredients are available even when lower dosages are approved for OTC product sale.

Another important consideration is that OTC drug products are more readily available to consumers and therefore more accessible to children than prescription products containing the same active ingredient(s). The CPSC concludes that the available data support the finding that maintaining CR packaging is necessary to protect children from serious injury or illness from ingesting oral prescription drug products that have been granted OTC status.

2. Technical Feasibility, Practicability, and Appropriateness

As a prerequisite to a CR packaging rule, the Commission must also find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the active ingredient(s) in the product and not interfere with its intended storage or use.

In some cases the same packaging can be used for the OTC product as for the prescription product. However, companies must modify the labels since FDA labeling requirements for OTC drug products differ from the labeling requirements for prescription drugs. Also, most companies develop new packaging specifically for the OTC market. Unit dose packaging is popular for the OTC market especially for drug products such as antihistamines that are sold in limited quantities. Other products containing active ingredients such as the anti-inflammatory compounds ibuprofen and naproxen are sold in bottles. CR designs of this sort of unit and reclosable packaging are commercially available. The change in status of the drug from prescription-only to OTC does not change the availability of the CR packaging in mass-produced quantities, or detract from its ability to maintain the shelf life of switched drug products. Therefore, the Commission concludes that CR packaging for OTC-switched drug products is technically feasible, practicable, and appropriate.

3. Other Considerations

Section 3(b) of the PPPA requires that the Commission consider the following in establishing a special packaging standard:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and preliminarily finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

E. Applicability

The packaging configuration for a drug product to be switched is determined before a company submits the OTC-switch application to the FDA. Accordingly, the Commission is proposing that this rule apply prospectively to drug products for

[5] *Guidance for Industry, Changes to An Approved NDA or ANDA*. Food and Drug Administration, Drug Information Branch, Center for Drug Evaluation and Reserech, November 1999. This document is available on the FDA website at: www.fda.gov/cder/guidance/index.htm

Copies can also be obtained by calling the FDA Drug Information Branch at (301) 827–4573.

which the application for the OTC-switch is submitted to the FDA on or after the effective date of the final rule (180 days after publication).

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year after the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

CR packaging is currently available commercially for most, if not all, types of oral prescription drug products that would be subject to this rulemaking. Thus, the Commission is proposing that the final rule take effect 180 days after its publication.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to maintain CR packaging for OTC-switched drug products. A copy of the preliminary analysis is available for inspection in the docket for this rulemaking. The assessment reports that the incremental cost of providing basic CR packaging is usually small ($0.005-$0.02/per package). The assessment also notes that the incremental cost may be somewhat higher if the marketer provides more elaborate packaging in the effort to create ''shelf appeal'' to attract consumers and compete with other OTC products in the same therapeutic category.

At present, the Commission does not have quantitative information on the number of small businesses that might be affected by the OTC-switch proposal. However, the staff assessment concludes that because the incremental cost of CR packaging is minimal, and because these costs (if any) are likely to be passed on to consumers, it is unlikely that the proposal will have a substantial effect on a significant number of small businesses. The Commission requests comment from companies that supply OTC-switched drug products. The Commission is particularly interested in information on the likely effect of this proposed rule on small businesses.

Many OTC-switched drug products are already in CR packaging. In some instances, for example with certain oral dosage formulations of acetaminophen, ibuprofen and loperamide, this is because the Commission has affirmatively required CR packaging. In other cases, the marketer has elected voluntarily to use CR packaging.

This notice proposes revocation of the existing requirement at 16 CFR 1702.16(b) that new drug approval be obtained from the FDA prior to Commission approval of a petition seeking exemption from a CR packaging requirement. Allowing for advance consideration and approval of any legitimate CR packaging exemption petition should minimize or eliminate any unwarranted economic impact that would otherwise result from maintaining the CR packaging requirement on OTC-switched oral prescription drug products or from requiring a change to CR packaging post-marketing.

Based on the foregoing assessment, the Commission certifies that the rule to maintain CR packaging for OTC-switched drug products, if promulgated in final form as proposed, would not have a significant impact on a substantial number of small businesses or other small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for OTC-switched drug products.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

I. Executive Orders

As provided for in Executive Order 12,988 the CPSC states the preemptive effect of this proposed regulation as follows.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through procedures specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule requiring CR packaging for OTC-switched drug products would preempt non-identical state or local special packaging standards for such drug products.

J. Trade Secret or Proprietary Information

Any person responding to this notice who believes that any information submitted is trade secret or proprietary should specifically identify the exact portions of the document claimed to be confidential. The Commission's staff will receive and handle such information confidentially and in accordance with section 6(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(a). Such information will not be placed in the public docket for the rulemaking and will not be made available to the public simply upon request. If the Commission receives a request for disclosure of the information or concludes that its disclosure is necessary to discharge the Commission's responsibilities, the Commission will inform the person who submitted the information and provide that person an opportunity to present additional information and views concerning the confidential nature of the information. 16 CFR 1015.18(b) (1999).

The Commission's staff will then make a determination of whether the information is trade secret or proprietary information that cannot be released. That determination will be made in accordance with applicable provisions of the CPSA; the Freedom of Information Act (FOIA), 5 U.S.C. 552b; 18 U.S.C. 1905; the Commission's procedural regulations at 16 CFR part 1015 governing protection and disclosure of information under provisions of FOIA; and relevant judicial interpretations. If the Commission concludes that any part of the information that has been submitted with a claim that the information is a trade secret or proprietary is disclosable, it will notify the person submitting the material in writing and provide at least 10 calendar days from the receipt of the letter to allow for that person to seek judicial relief. 15 U.S.C. 2055(a)(5) and (6); 16 CFR 1015.19(b).

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances, Reporting and recordkeeping requirements.

For the reasons set forth above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by republishing paragraph (a) introductory text and by adding new paragraph (a)(32) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(32) *Over-the-Counter Drug Products.* (i) Any over-the-counter drug product in a dosage form intended for oral administration that contains an active ingredient also contained in a drug product that is or was a prescription drug product required by paragraph (a)(10) of this section to be in special packaging shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c). This requirement applies whether or not the amount of the active ingredient in the over-the-counter drug product is different from the amount of that active ingredient in the prescription drug product. This requirement does not apply to a drug product for which an application for over-the-counter marketing has been submitted to the FDA before [insert date 180 days after promulgation of final rule] or which has been granted over-the-counter status by the FDA before [insert date 180 days after promulgation of final rule]. Notwithstanding the foregoing, any special packaging requirement under this § 1700.14 otherwise applicable to an over-the-counter drug product remains in effect.

(ii) For purposes of this paragraph (a)(32), active ingredient means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the body of humans; and drug product means a finished dosage form, for example, tablet, capsule, or solution, that contains a drug substance (active ingredient), generally, but not necessarily, in association with one or more other ingredients. (These terms are intended to have the meanings assigned to them in the regulations of the Food and Drug Administration appearing at 21 CFR 201.66 and 21 CFR 314.3, respectively.)

§ 1702.16 [Amended]

3. Section 1702.16 is amended by removing paragraph (b) thereof in its entirety.

Dated: August 23, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Suzanne Barone, Ph.D., EH, to the Commission, ''Proposed Rule to Require Special Packaging for Oral Prescription Drugs that are Granted Over-the-Counter Status by the Food and Drug Administration,'' May 16, 2000.
2. Letter from Debra L. Bowen, M.D., Acting Director, Division of Over-the-Counter Drug Products, Food and Drug Administration, to Jeffrey S. Bromme, Esq., General Counsel, Consumer Product Safety Commission, October 7, 1998.
3. Memorandum from Marcia P. Robins, EC, to Suzanne Barone, Ph.D., EH, ''Economic considerations: Proposal to Maintain Child-Resistant Packaging Requirements for Oral Prescription Drugs that Have Been Granted OTC Status by the FDA,'' April 7, 2000.
4. Memorandum from Suzanne Barone, Ph.D., Project manager for Poison prevention, Directorate for Health Sciences, to Sadye E. Dunn, Secretary, Consumer Product Safety Commission, ''Responses to Questions from Commissioner Moore on Over-the-Counter Switches,'' June 23, 2000.

[FR Doc. 00–21937 Filed 8–29–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL–6860–9]

RIN 2025–AA02

Elimination of Special Treatment for Category of Confidential Business Information: Reproposal

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) published a document in the **Federal Register** on October 25, 1999 (64 FR 57421), proposing to amend its regulations to eliminate the special treatment of a category of confidential business information (CBI). This category of CBI includes comments received from businesses that substantiate their claims of confidentiality for previously submitted information. In response to requests from interested parties, EPA extended the comment period on the proposed rule from December 27, 1999, to January 26, 2000 (64 FR 71366, December 21, 1999). EPA is now reproposing the rule to address some of the comments that it received.

DATES: Comments on this proposed rule must be submitted by October 30, 2000.

ADDRESSES: Send written comments on this proposed rule to Docket Number EC–1999–015, Enforcement and Compliance Docket and Information Center (ECDIC), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Room 4033, Mail Code 2201A, Washington, DC 20460; Phone, 202–564–2614 or 202–564–2119; Fax, 202–501–1011; Email, *docket.oeca@epa.gov.* Documents related to this proposed rule are available for public inspection and viewing by contacting the ECDIC at this same address.

FOR FURTHER INFORMATION CONTACT: Rebecca Moser, Office of Information

Collection, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 2822, Washington, DC 20460; Phone, 202–260–6780; Fax, 202–260–8550; Email, *moser.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1976, EPA first promulgated its comprehensive CBI regulations as part of its regulations in 40 CFR part 2 for implementing the Freedom of Information Act (FOIA). These regulations include special provisions addressing CBI under specific EPA statutes. For all business information submitted to EPA, the regulations allow businesses that submit information to EPA to claim that information is entitled to confidential treatment. If information is claimed as CBI, EPA generally will not disclose the information to the public, in response to a FOIA request or otherwise, unless EPA makes a determination that the information is not entitled to confidential treatment and notifies the affected business giving the business an opportunity to seek judicial review of EPA's action. The regulations set out procedures for EPA to make confidentiality determinations for information claimed as confidential.

At the time the 1976 regulations were issued, EPA concluded that when EPA received a FOIA request or otherwise needed to determine the confidentiality of particular information claimed as CBI, EPA would need to obtain comments from the business that made the CBI claim telling the Agency why the business believes its information is entitled to confidential treatment. Thus, the regulations provide that EPA will notify the business when information it has claimed as confidential is requested under FOIA or EPA has some other reason to make a determination whether it is entitled to confidential treatment, and the business is given an opportunity to submit comments supporting its confidentiality claim. EPA refers to these comments as ''CBI substantiations.''

Under the FOIA and other statutes, such CBI substantiations were not required. At the time the CBI regulations were written, the leading case in this area was *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974), which held that information was deemed confidential if disclosure of such information was likely ''to impair the Government's ability to obtain necessary information in the future.'' Traditionally, the concept of impairment was applied when the information was voluntarily submitted and when the government believed that the submitter would not provide the information to the government if it were subject to disclosure. EPA believed that the public release of CBI substantiations would impair the Agency's ability to obtain necessary information substantiating CBI claims in the future.

At that time, EPA believed that affected businesses would be more likely to submit adequate substantiation information if such information were protected and that release of such information was likely to impair the Agency's ability to obtain it in the future. Therefore, based on EPA's reading of *National Parks*, the 1976 regulations encouraged the submission of CBI substantiations by granting such substantiations automatic confidential treatment by EPA if claimed by the business as confidential.

Currently, for business information other than substantiations, when EPA makes an initial determination that the information may be entitled to confidential treatment (*e.g.*, in response to a FOIA request), it notifies the business which asserted an applicable confidentiality claim, orally and in writing (40 CFR 2.204(e)). EPA's written notice provides the business with an opportunity to submit comments on the following:

(1) The portions of the information which are alleged to be entitled to confidential treatment;

(2) The period of time for which confidential treatment is desired by the business (*e.g.*, until a certain date, until the occurrence of a specified event, or permanently);

(3) The purpose for which the information was submitted to EPA and the approximate date of submission, if known;

(4) Whether a business confidentiality claim accompanied the information when it was received by EPA;

(5) Measures taken by the business to guard against undesired disclosure of the information to others;

(6) The extent to which the information has been disclosed to others and the precautions taken in connection therewith;

(7) Pertinent confidentiality determinations, if any, by EPA or other Federal agencies, and a copy of any such determination, or reference to it, if available;

(8) Whether the business asserts that disclosure of the information would be likely to result in substantial harmful effects on the business's competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects; and

(9) Whether the business asserts that the information is voluntarily submitted information, and if so, whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

Each business that is notified and invited to comment must submit comments to EPA by the date specified in the notice or, before the comments are due, request an extension of the comment period and receive approval from the EPA legal office (40 CFR 2.205(b)). If the business fails to submit comments by the due date (including any approved extension), the business waives its claim to confidentiality, and EPA may release the information without further notice.

If the business submits a CBI substantiation, the EPA legal office makes a final confidentiality determination. In making the final determination, the EPA legal office considers the business's claim, the CBI substantiation, any previously-issued confidentiality determinations which are pertinent, and other materials it finds appropriate (40 CFR 2.205(d)). EPA's current regulations list the following criteria for determining whether business information is entitled to confidential treatment (40 CFR 2.208):

(1) The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;

(2) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures;

(3) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);

(4) No statute specifically requires disclosure of the information; and

(5) Either—

(a) The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position; or

(b) The information is voluntarily submitted information, and its disclosure would be likely to impair the Government's ability to obtain necessary information in the future. (See below for a discussion of a change in the concept of voluntarily-submitted information.)

If EPA determines that the information is entitled to confidential treatment for the full period requested by the business, EPA will maintain the information as CBI for that period and deny any FOIA requests for the information. If EPA determines that the information is not entitled to confidential treatment, then EPA notifies the affected business of its intention to release the information within 10 working days (or other applicable time period specified in subpart B), unless the business first seeks judicial review of the determination and seeks preliminary injunctive relief against disclosure (40 CFR 2.205(f)).

Under EPA's current regulations (40 CFR 2.205(c)), EPA will automatically treat a CBI substantiation marked as confidential as CBI (40 CFR 2.203(b)) if the information in the substantiation is not otherwise possessed by EPA. EPA does not request that the business submit comments substantiating why the information in its CBI substantiation should be treated as confidential. Thus, EPA does not make a substantive confidentiality determination for this information and treats it as confidential solely on the grounds that the business claims it as CBI. This means EPA will deny any FOIA request for the CBI substantiation. The result is that information submitted to EPA in a CBI substantiation and claimed as CBI is treated differently than all other business information submitted to EPA and claimed as CBI. This special treatment has been challenged in Federal Court (*Northwest Coalition for Alternatives to Pesticides (NCAP)* v. *EPA*, D.D.C., Civil Action No. 99–437) on the grounds that it violates FOIA.

EPA reviewed the provision granting automatic CBI treatment in response to the legal challenge by NCAP. After considering the validity of 40 CFR 2.205(c) in light of legal developments since 1976, EPA believes it is unlikely that EPA could defend its original basis for providing automatic protection of CBI substantiations. As part of a motion to stay the proceedings, EPA agreed to propose removing 40 CFR 2.205(c). (Orders granting a stay of the proceedings were filed on July 23, 1999, January 13, 2000, and April 18, 2000.)

On October 25, 1999, EPA published a notice in the **Federal Register** proposing to remove 40 CFR 2.205(c), eliminating the special treatment of CBI substantiations (64 FR 57421) and, thus, treating the information in CBI substantiations like all other business information submitted to EPA and claimed as CBI under 40 CFR part 2, subpart B. EPA proposed to eliminate the provision (1) because special treatment of substantiations is no longer necessary and (2) because elimination of the provision will bring EPA into conformity with other federal agencies. Comments to the proposed rule were due on December 27, 1999. In response to requests from interested parties, EPA extended the comment period from December 27, 1999, to January 26, 2000 (64 FR 71366, December 21, 1999).

EPA received comments on its proposed rule from nine entities: one in favor of the proposed rule [Northwest Coalition for Alternatives to Pesticides (NCAP)] and eight opposed (Chemical Specialities Manufacturers Association, Color Pigments Manufacturers Association, Inc., Edison Electric Institute, American Crop Protection Association, Utility Air Regulatory Group, Carolina Power & Light Company, FirstEnergy Corp., and Duke Energy Corporation).

NCAP supported the proposed rule, stating that 40 CFR 2.205(c) should be removed since it currently allows EPA to exempt from disclosure an entire category of documents (*i.e.*, CBI substantiations that are claimed as confidential) that should not be entitled to exemption under FOIA. NCAP added that EPA's current regulations allow the Agency to withhold an entire CBI substantiation without segregation of non-exempt material based solely on the desire of the business that submitted the substantiation, and that under FOIA (USC 552(b)), EPA is required to disclose any reasonable segregable information that is not exempt.

Comments opposing the proposed rule included the following:

(1) EPA did not provide sufficient rationale for removing 40 CFR 2.205(c),

(2) Businesses would be reluctant to provide the detailed information needed to substantiate original CBI claims for fear that a substantiation might be released,

(3) The proposed rule could create an endless cycle of substantiations and place unnecessary burdens on EPA and industry, and

(4) The rule should not be applied retroactively.

Based on the comments received, EPA is reproposing the rule to provide a more thorough explanation for the proposed amendment which would change the CBI regulations to eliminate the automatic protection of CBI substantiations that are claimed as confidential and submitted to the Agency after the effective date of the final rule. EPA believes that the amendment to eliminate the special treatment in 40 CFR 2.205(c) is justified for the following reasons:

(1) *Change in Concept of ''Voluntarily-Submitted Information.''* When the CBI regulations were written in 1976, EPA believed that the public release of CBI substantiations would impair the Agency's ability to obtain necessary information in the future. Traditionally, the concept of impairment was applied when the information was voluntarily submitted and when the government believed that the submitter would not provide the information if it were subject to disclosure. The leading case at the time, *National Parks & Conservation Association* v. *Morton*, 448 F.2d 765 (D.C. Cir. 1974), concluded that information is confidential if disclosure of the information is likely ''to impair the Government's ability to obtain necessary information in the future.'' EPA, in issuing its 1976 regulations, believed substantiations should be considered as voluntarily-submitted information which, if released, would impair the Agency's ability to obtain such information in the future and, thus, granted substantiations automatic CBI status in the regulations.

The U.S. Court of Appeals for the D.C. Circuit ruled in *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871 (D.C. Cir. 1992), that ''voluntarily'' submitted information should be categorically protected, provided it is not ''customarily'' disclosed to the public by the submitter. Subsequent judicial interpretation of the word ''voluntary'' suggests that if an industry must submit information to obtain a benefit—as in this case, the nondisclosure of CBI—then the submission is not voluntary.

In light of *Critical Mass* and subsequently decided cases, EPA believes it is unlikely that EPA could defend the position that CBI substantiations are voluntarily submitted and that they should therefore be automatically protected from disclosure without further finding that they are confidential. Thus, EPA believes it must have an independent rationale to determine whether any specific CBI substantiation submitted to the Agency is itself CBI. In response to the current litigation, EPA, in consultation with the Department of Justice, has determined that according to CBI substantiations the same treatment as other business information claimed as confidential under 40 CFR part 2, subpart B, is the appropriate legal position.

(2) *Comparison to Practices at Other Federal Agencies.* EPA contacted 12 other departments and agencies to determine how they handle CBI substantiations. These included the Department of Transportation, the Food

and Drug Administration, the Department of Energy, the Department of Commerce, the National Oceanic and Atmospheric Administration, the Department of Health and Human Services, the Department of the Interior, the Department of Education, the National Aeronautics and Space Administration, the Consumer Product Safety Commission, and the National Science Foundation. Although the specific procedures differ, none of these departments and agencies automatically protects CBI substantiations that are claimed as confidential from public disclosure. EPA's current practice of categorically protecting all CBI substantiations that are claimed as confidential, without examining the nature of these substantiations, appears to be unusual. The proposed rule would bring EPA into closer alignment with the practices of other departments and agencies.

(3) *Protecting Both Public Access and Confidentiality.* The amendment to eliminate the special treatment in 40 CFR 2.205(c) will help ensure that EPA honors both the public's right to obtain government-held information under FOIA and other laws and a submitter's right to the protection of CBI, as required under FOIA and other statutes. Under the proposed amendment, when EPA receives a FOIA request for a CBI substantiation that has been claimed as confidential and submitted after the effective date of the final rule, EPA will no longer automatically deny the request; rather, as with all other business information claimed as CBI, EPA will notify the affected business, provide the business the same opportunity to comment on its confidentiality claim that the business would have for any other information claimed as CBI, and then make an individual determination whether the information in the CBI substantiation is entitled to confidential treatment. The information would continue to be protected from disclosure if the business submitted comments, and the Agency determined that the information was entitled to confidential treatment.

EPA acknowledges that the proposed rule would create some additional burden for EPA and affected businesses when the Agency needs to make a final confidentiality determination for a particular CBI substantiation. EPA believes that only a portion of the CBI substantiations that are claimed as confidential would ever require such a determination (*e.g.*, in response to a FOIA request for the substantiation or if EPA needed to determine its confidentiality for other reasons). The Agency does not expect the proposed rule to impose a significant burden on affected businesses (see below, V. Paperwork Reduction Act).

II. Description of the Proposed Rule

EPA proposes to amend its general CBI regulations (40 CFR part 2, subpart B) to eliminate the special treatment of CBI substantiations. From the effective date of the rule forward, CBI substantiations would be treated in exactly the same manner as other business information that is claimed as confidential. Under the proposed rule, businesses would still be able to claim CBI substantiations as confidential as they can any other business information submitted to EPA (40 CFR 2.204(e)(6)) and would be entitled to all the other procedural rights in 40 CFR part 2, subpart B.

If EPA received a FOIA request for a CBI substantiation that had been marked as confidential and submitted to the Agency after the effective date of the final rule, EPA would make a preliminary determination of confidentiality, notify the affected business and request comments on its confidentiality claim, and then make a final confidentiality determination, in accordance with 40 CFR 2.204 and 2.205. If EPA then determined that the CBI substantiation was entitled to confidential treatment, EPA would continue to protect the information and deny any pending FOIA request. If EPA determined that the CBI substantiation was not entitled to confidential treatment, it would notify the affected business of its intention to release the information within 10 working days (or other applicable time period specified in subpart B) of the business's receipt of the notice, unless the appropriate EPA legal office was first notified that the business had sought judicial review and had sought preliminary injunctive relief against disclosure (40 CFR 2.205(f)).

This amendment would apply only to CBI substantiations submitted after the effective date of the final rule. Among the comments EPA received on the October 25, 1999, proposed rule were comments arguing that this proposed amendment, if adopted, should not be applied retroactively to CBI substantiations submitted to EPA before this change is made. Concerns were expressed about the fairness of applying the proposed rule to old substantiations which businesses claimed as confidential and submitted to EPA with the understanding that the substantiations would be protected. In response to these comments, EPA proposes to apply the rule only prospectively to CBI substantiations submitted after the change goes into effect.

As discussed above, EPA does not believe it can successfully defend its existing regulation at 40 CFR 2.205(c), in light of case law developments since 1976. Thus, if EPA were to continue to deny FOIA requests for CBI substantiations based on § 2.205(c), EPA could potentially be ordered by the courts to conduct a CBI determination or to disclose the information to FOIA requesters. EPA could also be potentially liable for attorneys' fees under FOIA. In addition, affected businesses would be at a disadvantage in protecting their CBI substantiations from disclosure in response to FOIA requests. Since the businesses would not have provided comments to EPA to substantiate why information in their CBI substantiations is entitled to confidential treatment, a court reviewing an EPA denial of a FOIA request for a substantiation would have only the issue of § 2.205(c) before it. There would be no substantive argument about why the information in a particular CBI substantiation is confidential. Thus, if the court decided that § 2.205(c) was not an appropriate basis for denying the FOIA request, EPA would be ordered to disclose the information.

On the other hand, if a CBI substantiation submitted after the effective date of the final rule were requested under FOIA, EPA would give the affected business an opportunity to comment on why the CBI substantiation is confidential, and EPA would be able to make a substantive final confidentiality determination. EPA believes it would be much more likely to prevail in defending such a substantive determination than in defending a denial based solely on § 2.205(c). EPA's purpose since 1976 has been to have CBI regulations that allow businesses to submit information to EPA while protecting its confidentiality and that allow EPA to make appropriate, defensible confidentiality determinations. We believe this proposed amendment is consistent with those goals and will allow businesses and EPA to have confidence that EPA can protect confidential CBI substantiations from public disclosure.

Generally, a CBI substantiation exists only because someone has requested access under FOIA to specific business information claimed as CBI, and EPA has given the affected business an opportunity to comment in support of its confidentiality claim. If EPA were to conclude that the underlying information is not entitled to confidential treatment, the FOIA

requester would get the information and would be unlikely to have any interest in the content of the CBI substantiation, since it had not proven persuasive with EPA.

If EPA were to conclude that the underlying information is entitled to confidential treatment, the FOIA requester would not get the information. Depending on the rationale in EPA's final confidentiality determination, the requester might subsequently ask to see the CBI substantiation since it had formed some or all of the basis for EPA's determination. The FOIA requester's interest in the CBI substantiation is contemporaneous with the final confidentiality determination. EPA believes that applying the rule prospectively will respond to the majority of future requests for CBI substantiations, and also avoid placing an undue burden on businesses that submitted CBI substantiations in the past.

EPA proposes to apply the rule prospectively, without changing the procedures for handling substantiations that were submitted prior to the effective date of the final rule. At the same time, EPA would like to solicit public comments on two alternative approaches: (1) Applying the rule prospectively, but notifying affected businesses when old substantiations are requested under FOIA; and (2) applying the rule retroactively.

(1) Under the first alternative approach, EPA would notify the affected business if a FOIA request were received for an old substantiation (*i.e.*, a substantiation submitted prior to the effective date of the final rule) and provide the business with an opportunity to comment. In cases involving old substantiations, EPA would not treat the failure to comment as a waiver of the confidentiality claim. Any comments submitted by the affected business could provide EPA with an additional basis for defending its denial of a related FOIA request (in addition to § 2.205(c)), if such a denial were ever challenged in court.

If EPA were to take this approach, it might amend § 2.205(c) to read as follows:

- If information submitted to EPA by a business as part of its comments under this section prior to [Insert effective date of final rule] pertains to the business's claim, is not otherwise possessed by EPA, and is marked when received in accordance with § 2.203(b), it will be regarded by EPA as entitled to confidential treatment. This subsection does not apply to comments received after [Insert effective date of final rule].
- If EPA receives a request for comments submitted by an affected business under this section prior to [Insert effective date of final rule] which are entitled to confidential treatment, EPA will notify the affected business in accordance with § 2.204(e) and provide the business with an opportunity to comment. However, notwithstanding § 2.203(a)(2), failure to comment will not constitute a waiver of the confidentiality claim.

(2) Under the second alternative approach, EPA could apply the rule retroactively. This approach would mean that all CBI substantiations, regardless of when they were submitted to EPA, would be treated in exactly the same manner as other types of CBI. If the rule were applied retroactively and EPA received a FOIA request for an old substantiation, the Agency would notify the affected business and provide it with an opportunity to submit comments. As described above, comments submitted by the affected business could be useful to EPA in defending the denial of a FOIA request if it were ever challenged in court. If the rule were applied retroactively, failure by the affected business to submit comments would constitute a waiver of its confidentiality claim.

III. Statutory Authority

EPA is proposing this rule under the authority of 5 U.S.C. 301, 552 (as amended), and 553.

IV. Economic Impact

This proposed rule is not expected to have a significant economic impact on the parties affected by EPA's general CBI regulations (40 CFR part 2, subpart B). Any additional costs would be associated with preparing and submitting comments that explain why a CBI substantiation should be confidential. Based on best professional judgment, EPA estimates that of the approximately 360 substantiations it receives each year that are claimed as confidential, no more than about one-fourth (*i.e.*, 90) would be requested under FOIA or require final confidentiality determinations for other purposes. The total labor cost to businesses to submit comments defending the confidentiality of these 90 CBI substantiations would be approximately $41,798.70 (see below, V. Paperwork Reduction Act). No capital costs or operation and maintenance costs would be incurred as a result of removing 40 CFR 2.205(c).

V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1665.04) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. Environmental Protection Agency Mail Code 2822, 1200 Pennsylvania Ave., NW, Washington, DC 20460; by email at *farmer.sandy@epamail.epa.gov*; or by calling (202) 260–2740. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr*.

This ICR deals with the information collection process that would occur under the proposed rule if EPA found it necessary to determine the confidentiality of a CBI substantiation received from a submitter and claimed as CBI (*e.g.*, in response to a FOIA request or for some other purpose). EPA expects that it would need to make final confidentiality determinations for only some of the CBI substantiations that are claimed as confidential.

Under the proposed rule, CBI substantiations that are claimed as CBI and submitted after the effective date of the final rule would be treated in the same manner as any other business information that is claimed as CBI. Thus, under 40 CFR 2.205(d), if EPA requests comments from a business related to a CBI substantiation submitted after the effective date of the proposed rule, and the business fails to furnish comments by the specified due date, the business waives its claim to confidentiality.

EPA receives approximately 443 substantiations per year, 360 of which are claimed as confidential. Based on best professional judgment, the Agency estimates that under the proposed rule, EPA might be required to make final confidentiality determinations for about one-fourth (*i.e.*, 90) of the substantiations that are claimed as confidential. In each case, EPA estimates that it would take affected businesses approximately 14 hours (2 attorney hrs., 4 manager hrs., 7 technical hrs., and 1 clerical hr.) at a cost of approximately $464.43 in labor ($50.00/attorney hr., $33.42/manager hr., $30.66/technical hr., and $16.13/clerical hr.) to prepare and submit comments. Affected businesses would spend a total of approximately 1,260 hours and $41,798.70 in labor costs to submit 90 such substantiations to EPA. No capital costs or operation and maintenance costs would be incurred in response to this information collection request.

Burden means the total time, effort, or financial resources expended by persons

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

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

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division U.S. Environmental Protection Agency, Mail Code 2822, 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number (ICR No. 1665.04) in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

VI. Regulatory Flexibility Act, as Amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. As indicated above, EPA expects that under the proposed rule, only a portion of the CBI substantiations that are submitted to EPA after the effective date of the final rule and marked as confidential would ever be requested under FOIA or require a confidentiality determination for some other reason. Based on best professional judgment, the Agency expects that about one-fourth of the substantiations that are claimed as confidential might be requested under FOIA; about 90 businesses would be affected (some of which might be small) and the total labor costs to these businesses would be approximately $41,798.70. No capital costs or operation and maintenance costs would be incurred. Therefore, under 5 U.S.C. 605(b), I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

VII. Environmental Impact

This proposed rule is expected to have no environmental impact. It pertains solely to the collection and dissemination of information.

VIII. Executive Order 12866

Under Executive Order 12866 [48 FR 51735 (October 4, 1993)], EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to interagency review under the Executive Order.

IX. Executive Order 13132 on Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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 Section 6 of 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 proposed rule does not have federalism implications. It 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. This proposed rule eliminates the special treatment of a category of confidential business information. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

X. Executive Order 13084 on Consultation With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature

of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed rule applies to businesses, not government entities, submitting comments to substantiate CBI claims. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XI. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a federal mandate which 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, for any rule subject to Section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a federal mandate as defined in UMRA. The proposed rule does not include a federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and does not establish regulatory requirements that may significantly or uniquely affect small governments.

XII. Executive Order 13045

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

EPA believes Executive Order 13045 applies only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

XIII. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C., 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments and specifically invites the public to identify any potentially-applicable voluntary consensus standards and explain why such standards should be used in this rule.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

Dated: August 24, 2000.

Carol M. Browner,

Administrator.

For the reasons set out above, EPA proposes to amend 40 CFR part 2 as follows:

PART 2—PUBLIC INFORMATION

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501, and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.205 is amended by revising paragraph (c) to read as follows:

§ 2.205 Final confidentiality determination by EPA legal office.

* * * * *

(c) *Confidential treatment of some comments from business.* If information submitted to EPA by a business as part of its comments under this section prior to [effective date of final rule] pertains to the business's claim, is not otherwise possessed by EPA, and is marked when received in accordance with § 2.203(b), it will be regarded by EPA as entitled to confidential treatment. This paragraph (c) does not apply to comments received after [effective date of final rule].

* * * * *

[FR Doc. 00–22158 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI42–7823; FRL–6851–4]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to adjust the applicability date for the reinstating the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in Muskegon County, Michigan and is proposing to determine that the area has attained the 1-hour ozone NAAQS. This proposal is based on 3 consecutive years of complete,

quality-assured, ambient air monitoring data for the 1997–1999 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area. On the basis of this determination, EPA is also proposing that certain attainment demonstration requirements, and certain related requirements of part D of subchapter I of the Clean Air Act (CAA), do not apply to the Muskegon area.

EPA is also proposing to approve the State of Michigan's request to redesignate Muskegon County to attainment for the 1-hour ozone NAAQS. Michigan submitted the redesignation request for the Muskegon area on March 9, 1995, and submitted two updates to the request on June 14 and July 5, 2000. As part of this proposal, EPA is also proposing to approve the State's plan for maintaining the 1-hour ozone standard for the next 10 years as a revision to the Michigan State Implementation Plan (SIP). In this proposal and corresponding direct final rule, EPA is also notifying the public that we believe the motor vehicle emissions budgets for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the Muskegon, MI submitted maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan.

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving and disapproving portions of the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this proposed rule within 30 days of this publication. Should we receive adverse comment, we will publish a document informing the public that the direct final rule will not take effect and that we will address adverse comments in a subsequent final rule based on this proposed rule. If we do not receive adverse comments, the direct final rule will take effect on the date stated in that document and EPA will not take further action on this proposed rule. We do not plan to institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: EPA must receive written comments by September 29, 2000.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Mooney at (312) 886–6043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone John Mooney at (312) 886–6043 before visiting the Region 5 Office.)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Hydrocarbons, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: August 4, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–21914 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG13

Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for Wintering Piping Plovers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Extension of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designation of critical habitat for the wintering population of the piping plover (*Charadrius melodus*). We also provide notice that the public comment period for the proposal is extended to allow all interested parties to submit written comments on the proposal and the draft economic analysis. Comments previously submitted during the comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

DATES: The original comment period is scheduled to close on September 5, 2000. The comment period is hereby extended until October 30, 2000. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at *http//ifw2es.fws.gov/library* or by writing to the Field Supervisor, Ecological Services Field Office. c/o TAMU-CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, TX 78412. All written comments should be submitted to the Field Supervisor at the above address or may be provided by e-mail to *winterplovercomments@fws.gov* or by facsimile to 361/994–8262. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lee Elliott, Wildlife Biologist, at the above address (telephone 361/994–9005).

SUPPLEMENTARY INFORMATION:

Background

The piping plover is a small shorebird, about 17–18 centimeters (8 inches) long and weighing from 43 to 63 grams (1.5 to 2.25 ounces). The species breeds in the northern Great Plains (from Alberta to Ontario, Canada and south to Kansas and Colorado), the Great Lakes region, and the Atlantic Coast (from Newfoundland, Canada to North Carolina). Piping plovers winter on the southern Atlantic and Gulf Coasts from North Carolina to Texas, as well as eastern Mexico and Caribbean islands from Barbados to Cuba and the Bahamas (Haig 1992). Birds from each of the three breeding populations can be found throughout the wintering range. Individuals begin arriving on the wintering grounds in mid-July and can be found on the wintering grounds until mid-May. Populations declined dramatically due to year-round shooting of the species prior to passage of the Migratory Bird Treaty Act. Populations began to rebound following this protection, but loss of habitat and

disturbance of nesting birds has led to a more recent decline of the species.

In January of 1986, the piping plover was listed as endangered within the watershed of the Great Lakes, and as threatened in the remainder of its range, under the Endangered Species Act of 1973, as amended (Act). The primary threats to the species were identified as habitat disturbance and destruction, and disturbance of nesting adults and chicks (50 FR 50726). On July 6, 2000, we proposed in the **Federal Register** approximately 2,691 kilometers (1,672 miles) of shoreline along the South Atlantic and Gulf Coasts as critical habitat for the wintering population of piping plovers (65 FR 41782). The proposal includes shoreline areas in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Consequently, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment at the above Internet and mailing addresses.

Public Comments Solicited

We solicit comments on the draft economic analysis described in this notice, as well as any other aspect of the proposed designation of critical habitat for the wintering population of the piping plover. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to October 30, 2000. Written comments may be submitted to the Field Supervisor at the above address.

Author: The primary author of this notice is Lee Elliott, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 24, 2000.

Nancy M. Kaufman,

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 00–22118 Filed 8–29–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 169
Wednesday, August 30, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations at William M. Mercer, Incorporated Boston, MA on October 2, 2000.

DATES: The meeting will be held on October 2, 2000 from 8:30 AM to 5:00 PM.

ADDRESSES: The meeting will be held at William M. Mercer, Incorporated, at 200 Clarendon Street, 37th Floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at William M. Mercer, Incorporated, 200 Clarendon Street, 37th Floor, Boston, MA on Monday, October 2, 2000 from 8:30 AM to 5:00 PM.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the subject of the meeting falls with the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: August 14, 2000.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 00–22214 Filed 8–29–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of the meetings in September of the Commission on 21st Century Production Agriculture. The purpose of the meetings on September 13–15, 2000 is a working session to address issues regarding agricultural policy initiatives to be included in the Commission report. These meetings are open to the public.

PLACE, DATE, AND TIME OF MEETING: The meetings will be held September 13, 2000, from 1:30 p.m.–5 p.m. in Room 221–A, September 14, 2000, from 8 a.m. to 5 p.m. in Room 108–A, and September 15, 2000, from 8 a.m. to 12 p.m. in Room 221–A, Whitten Building.

FOR FURTHER INFORMATION CONTACT: Mickey Paggi (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: August 25, 2000.

Keith J. Collins,

Chief Economist.

[FR Doc. 00–22153 Filed 8–29–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–026–2]

Monsanto Co.; Extension of Determination of Nonregulated Status for Corn Genetically Engineered for Glyphosate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional corn line our determination that a corn line developed by Monsanto Company, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by Monsanto Company in its request for an extension of a determination of nonregulated status, an analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our finding of no significant impact.

EFFECTIVE DATE: September 29, 2000.

ADDRESSES: You may read the extension request, the environmental assessment and finding of no significant impact, and all comments received 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.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Biotechnology Assessments Section, Permits and Risk Assessments, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: kay.peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340,

''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On January 11, 2000, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 00–011–01p) from Monsanto Company (Monsanto) of St. Louis, MO, for a corn line designated as Roundup Ready® corn line NK603 (NK603), which has been genetically engineered for tolerance to the herbicide glyphosate. Monsanto requested an extension of a determination of nonregulated status issued previously for Roundup Ready corn line GA21 (GA21), APHIS petition number 97–099–01p (62 FR 64350–64351, December 5, 1997, Docket No. 97–052–2). Based on the similarity of NK603 to GA21, the antecedent organism, Monsanto requested a determination that glyphosate-tolerant corn line NK603 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On June 21, 2000, APHIS published a notice in the **Federal Register** (65 FR 38494–38495, Docket No. 00–026–1) announcing that an environmental assessment (EA) for Monsanto's extension request had been prepared and was available for public comment. During the designated 30-day public comment period, APHIS received a total of two comments, both of which were from university colleges of agriculture, and both of which were in support of the subject extension request. The two commenters supporting nonregulated status for corn line NK603 stressed, among other things, its agronomic suitability, the low probability of introgression of the herbicide tolerance trait due to the absence of sexually compatible wild relatives, and the environmental benefits of glyphosate use in no-till and minimum tillage systems. The EA and the finding of no significant impact (FONSI) are available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

Like the antecedent organism, corn line NK603 has been genetically engineered to express an enzyme, 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS), that imparts tolerance to the herbicide glyphosate. Corn was the source of the EPSPS enzyme in the antecedent organism, while a functionally equivalent EPSPS enzyme in NK603 was derived from *Agrobacterium* sp. strain CP4. The subject corn line and the antecedent organism were developed through use of the particle acceleration method, and expression of the added genes in NK603 and the antecedent organism is controlled in part by gene sequences derived from the plant pathogen *Agrobacterium tumefaciens.*

Corn line NK603 and the antecedent organism were genetically engineered using the same transformation method and contain a functionally equivalent enzyme which makes the plants tolerant to the herbicide glyphosate. Accordingly, we have determined that NK603 is similar to the antecedent organism GA21 in APHIS petition 97–099–01p and, therefore, should no longer be regulated under the regulations in 7 CFR part 340.

The subject corn line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from a plant pathogen. However, evaluation of field data reports from field tests of NK603, conducted under APHIS notifications since 1997, indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of its environmental release.

Determination

Based on an analysis of the data submitted by Monsanto, a review of other scientific data, and field tests of the subject corn line, APHIS has determined that corn line NK603: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than herbicide-tolerant corn varieties developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that corn line NK603 and any progeny derived from crosses with other corn varieties will be as safe to grow as corn that is not subject to regulation under 7 CFR part 340.

Because APHIS has determined that the subject corn line does not present a plant pest risk based on its similarity to the antecedent organism, Monsanto's corn line NK603 will no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject corn line or its progeny. However, importation of corn line NK603 and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act.

An EA was prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to its determination that Monsanto's corn line NK603 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 24th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–22097 Filed 8–29–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of Proposed Changes in the NRCS New Mexico FOTG, Section IV, Conservation Practices for Review and Comment

SUMMARY: It is the intention of NRCS New Mexico to issue a series of new conservation practice standards and specifications in its FOTG on Conservation Practices. These revised standards and specifications include: 313—Waste Storage Facility, 359—Waste Treatment Lagoon, 380—Windbreak/Shelterbelt Establishment, 391A—Riparian Forest Buffer, 394—Firebreak, 472—Use Exclusion, 490—Site Preparation for Woody Plant Establishment, 562—Recreation Area Improvement, 590—Nutrient Management, 612—Tree and Shrub Establishment, 633—Waste Utilization, 650—Windbreak/Shelterbelt Renovation, 660A—Tree and Shrub Pruning, and 666—Forest Stand Improvement.

The NRCS New Mexico State Conservationist has chosen to revise and supplement the National Standards and add specifications adapted to the State of New Mexico. These will be incorporated into Section IV of the New Mexico Field Office Technical Guide (FOTG). Some of these practices may be used in conservation systems that treat highly erodible land and wetlands.

Copies of these standards are available from NRCS in Albuquerque, NM and are also available electronically on the NRCS New Mexico Internet Homepage at: http://www.nm.nrcs.usda.gov/techserv/sec4home.htm.

SUPPLEMENTARY INFORMATION: Section 343 on the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to these proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

DATES: Comments will be received on or before September 29, 2000.

ADDRESSES: Inquire in writing to Mr. Rosendo Trevino, State Conservationist, NRCS, 6200 Jefferson NE, Suite 305, Albuquerque, NM 87109.

Authority: 16 U.S.C. 3801; Pub. L. 104–127.

Rosendo Trevino III,

State Conservationist.

[FR Doc. 00–22115 Filed 8–29–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: International Buyer Program: Application and Exhibitor Data.

Agency Form Number: ITA–4014P and ITA–4102P.

OMB Number: 0625–0151.

Type of Request: Regular Submission.

Burden: 1,060 hours.

Number of Respondents: 5,510.

Avg. Hours Per Response: 10 minutes and 180 minutes.

Needs and Uses: The International Trade Administration's International Buyer Program (IBP) encourages international buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The program has been successful, having substantially increased the number of foreign visitors attending these selected shows as compared to the attendance when not supported by the program. The number of shows selected to the program increased from 10 in FY 1986 to 28 in FY 2001. Among the criteria used to select these shows are: export potential, international interest, scope of show, stature of show, exhibitor interest, overseas marketing, logistics, and cooperation of show organizers. Form ITA–4014P, Exhibitor Data, is used to determine which U.S. firms are interested in meeting with international business visitors and the overseas business interest of the exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in an IBP domestic trade show and is used to list the firm and its products in an Export Interest Directory which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of international buyers to attend the show. The Form ITA–4102P, Application, is used by a potential show organizer to provide(1) his/her experience, (2) ability to meet the special conditions of the IBP, and (3) information about the domestic trade show such as the number of U.S. exhibitors and the percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, N.W., Washington, DC 20230. Email MClayton@doc.gov.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: August 24, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–22127 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration

Title: Application for Designation of a Fair

Agency Form Number: ITA–4135P.

OMB Number: 0625–0228.

Type of Request: Regular submission.

Burden: 100 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration's Tourism Industries office offers trade fair guidance and assistance to trade fair organizers, trade fair operators, and other travel and trade oriented groups. These fairs open doors to promising travel markets around the world. The ''Application for Designation of a Fair'' is a questionnaire that is prepared and

signed by an organizer to begin the certification process. It asks the fair organizer to provide details as to the date, place, and sponsor of the fair, as well as license, permit, and corporate backers, and countries participating. To apply for the U.S. Department of Commerce sponsorship, the fair organizer must have all of the components of the application in order. Then, with the approval, the organizer is able to bring in their products in accordance with Customs laws. Articles which may be brought in include, but are not limited to, actual exhibit booths, exhibit items, pamphlets, brochures, and explanatory material in reasonable quantities relating to the foreign exhibits at a fair, and material for use in constructing, installing, or maintaining foreign exhibits at a fair.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW, Washington, DC 20230. Email MClayton@doc.gov.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: August 24, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–22128 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1116]

Extension of Nonprivileged Status Authority, Oil Refinery Subzones

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, by an Act of Congress approved June 18, 1934, an Act ''To provide 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,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized 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 Board approved the oil refinery/petrochemical complex subzones listed below to conduct certain activity under zone procedures, subject to product and time restrictions;

Whereas, applications were submitted from the FTZ grantees of the subzones listed below, requesting a time extension of authority to elect nonprivileged foreign status (NPF) on crude oil and related products used in the production of certain petrochemical feedstocks and refinery by-products at the crude oil refineries/petrochemical complexes of the listed subzones;

Whereas, the applications were filed by the Board on August 23, 1999, and notice describing the applications and inviting public comment was given in the **Federal Register** (FTZ Docket 41–99, 64 FR 48140, 9/2/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the applications would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby amends the Board Orders listed below, authorizing an extension of authority for the listed subzones, subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500 and #2710.00.4510 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiner's report, Appendix ''C'');

—products for export;

—and, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

Subzone	Order	Docket No.
2H	791	Doc. 41(1)–99
2I	821	Doc. 41(2)–99
2J	895	Doc. 41(3)–99
3B	974	Doc. 41(4)–99
8F	822	Doc. 41(5)–99
8G	822	Doc. 41(6)–99
9E	769	Doc. 41(7)–99
20C	761	Doc. 41(8)–99
22I	779	Doc. 41(9)–99
22J	960	Doc. 41(10)–99
31B	878	Doc. 41(11)–99
35C	838	Doc. 41(12)–99
35D	891	Doc. 41(13)–99
47B	865	Doc. 41(14)–99
49E	792	Doc. 41(15)–99
49F	880	Doc. 41(16)–99
70T	879	Doc. 41(17)–99
82F	921	Doc. 41(18)–99
82G	962	Doc. 41(19)–99
84F	770	Doc. 41(20)–99
84J	785	Doc. 41(21)–99
84N	793	Doc. 41(22)–99
84O	837	Doc. 41(23)–99
84P	961	Doc. 41(24)–99
84Q	975	Doc. 41(25)–99
87A	808	Doc. 41(26)–99
87B	760	Doc. 41(27)–99
92D	747	Doc. 41(28)–99
99E	831	Doc. 41(29)–99
104C	805	Doc. 41(30)–99
115B	780	Doc. 41(31)–99
116A	740	Doc. 41(32)–99
116B	772	Doc. 41(33)–99
116C	848	Doc. 41(34)–99
122A	782	Doc. 41(35)–99
122C	765	Doc. 41(36)–99
122I	759	Doc. 41(37)–99
122J	771	Doc. 41(38)–99
122L	768	Doc. 41(39)–99
122M	1031	Doc. 41(40)–99
124A	825	Doc. 41(41)–99
124C	739	Doc. 41(42)–99
124E	773	Doc. 41(43)–99
124F	839	Doc. 41(44)–99
142A	790	Doc. 41(45)–99
142B	806	Doc. 41(46)–99
142C	894	Doc. 41(47)–99
146D	781	Doc. 41(48)–99
149C	920	Doc. 41(49)–99
149E	999	Doc. 41(50)–99
152B	762	Doc. 41(51)–99
154A	847	Doc. 41(52)–99
161B	862	Doc. 41(53)–99
181A	864	Doc. 41(54)–99
199A	731	Doc. 41(55)–99
199B	830	Doc. 41(56)–99
199C	863	Doc. 41(57)–99
202B	959	Doc. 41(58)–99

Signed at Washington, DC, this 24th day of August 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–22198 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

International Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The International Buyer Program of the Department of Commerce, which invited interested trade show organizer/sponsoring organizations to apply for inclusion on the program calendar for Fiscal Year 2002 (October 1, 2001 through September 30, 2002) allowed applications by e-mail for the first time this year. The application period, which began with publication of the **Federal Register** Notice on June 27, 2000, ended officially on August 11, 2000. Regrettably, the computer servers and e-mail communication system upon which the program depends failed to perform from August 9 through August 11, 2000. While a number of prospective applicants communicated their difficulties in applying owing to our communication system failure, some additional prospective applicants may have also been prevented from doing so. Organizers who were unable to communicate their application to the program should provide us a written statement that the organizer attempted to apply electronically during the period of computer/communications failure (August 9–11, 2000). The organizer should also resubmit a copy of its application and we will deem it to have been submitted during the competitive period.

FOR FURTHER INFORMATION CONTACT: Jin Boney at the Department of Commerce. Telephone number 202–482–0146 or FAX 202–482–0115 or via E-mail at jim.boney@mail.doc.gov

Dated: August 25, 2000.

John Klingelhut,

Director, Office of Private/Public Initiatives.

[FR Doc. 00–22199 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 000515143–0245–03]

RIN 0625–XX23

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT)

SUMMARY: This Notice supplements the **Federal Register** Notice of June 7, 2000, (65 FR No. 110 36117–36120) and July 21, 2000, (65 FR No. 141 45359) announcing the availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives (also referred to as ''interns'') from the Newly Independent States of the former Soviet Union. All information in the previous announcement remains the same, except for the changes to the closing date and an increase of $700,000 in the amount of funding, bringing the available total to $1.5 million. This increase is based on the availability of funds.

DATES: This Notice extends the closing date of the referenced **Federal Register** Notice for 3 months to 5 p.m. November 30, 2000. All awards are expected to be made prior to January 31, 2001.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

Dated: August 24, 2000.

Liesel Duhon,

Director, SABIT Program.

[FR Doc. 00–22129 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000531162-0238-03; I.D. 072800D]

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. Frameworks 13/34 allow scallop vessels temporary access to portions of the groundfish closed areas on Georges Bank and Nantucket Shoals to harvest sea scallops and allow selected vessels to land scallops in excess of the possession limit or take additional trips and use the proceeds of the excess catch or additional trips to offset the costs of the research proposals submitted in response to this notification. Frameworks 13/34 authorize certain scallop vessels during the 2000 scallop fishing year to fish three trips per vessel in Closed Area II (CA II), one trip per vessel in the Nantucket Lightship Closed Area (NLCA), and 2 trips per vessel in Closed Area I (CA I) for certain periods of time, unless modified by action taken by the Regional Administrator, Northeast Region, NMFS (Regional Administrator).

NOAA, in cooperation with the Council, is publishing this second of two solicitations to request proposals for scallop research utilizing set-aside TAC from CA I, NLCA, and any CA II research TAC that may remain after award to projects submitted under NOAA's original CA II solicitation. 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) possession limit allowed for all closed area trips.

DATES: All research proposals to be considered under this solicitation must be received between August 30, 2000 and no later than 5 p.m., local time, on September 20, 2000 (see **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 CA I, NLCA, and the remaining CA II research TAC, 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. Mark proposals ''Attention --Sea Scallop Research Proposals.''

FOR FURTHER INFORMATION CONTACT: Patricia M. Fiorelli, New England Fishery Management Council, (978) 465-0492, or David Gouveia, NMFS, (978) 281-9280.

SUPPLEMENTARY INFORMATION:

A. Background

On June 13, 2000, NMFS published a Request for Proposals (RFP) to utilize research TAC set-aside from the total TAC allocated for CA II (65 FR 37118). All research proposals to be conducted with TAC set aside funds from CA II must have been submitted during the submission period identified in the notice. Researchers were also informed that proposals to be conducted with TAC set aside funds from the NCLA and CA I could also be submitted during the submission period for CA II. However, researchers were informed that these proposals would be kept on file and would be reviewed against other proposals received as a result of the second RFP solicitation. At the July 26-27, 2000, Council meeting, the research TAC-set aside process was discussed and the Council announced that a second RFP solicitation would be published in the **Federal Register**in the very near future.

For research proposals to be conducted with TAC set aside funds from Closed Area II, the NMFS Northeast Regional Grant Office convened a review panel on July 14, 2000, made up mostly of the Council's Research Steering Committee (Committee) to review the proposals received and make recommendations to NMFS. NMFS is considering the Committee's recommendations and will make its recommendation to the NOAA Grants Officer. Consequently, this action solicits proposals for scallop research utilizing the research set-asides allocated for CA I, NLCA, and any CA II research TAC that may remain after award to projects submitted under NOAA's original CA II solicitation.

All research proposals to be conducted with TAC set-aside funds from CA I, the NLCA, and any remaining CA II research TAC must be received during the period identified in the **DATES** section of this document. You must submit one signed original and two signed copies of the completed application (including supporting information). We will not accept facsimile applications. 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 and subsequent recommendations to NMFS will occur on or about one week following the close of the submission period for research proposals as identified in the **DATES**section of this notice. Any proposals for TAC set-aside funds from the NLCA and CA I that were submitted and that were received by NMFS during the CA II solicitation period, June 13 through June 28, 2000, need not be resubmitted. However, researchers may amend such proposals during the solicitation period (see **DATES**).

The TAC set-aside for sea scallop research by area is as follows: The NLCA, 55,116 lb (25,000.6 kg); CA I, 70,548 lb (32,000.6 kg); and any remaining TAC to be determined. NOAA will award a grant to successful applicants through the NOAA grant award process. The project period for sea scallop research can not predate the current Atlantic sea scallop fishing year and may not exceed a 12-month period. Proposals to fund research started on or after the project period are eligible for consideration. However, if the project is not approved, any research or expenditures related to this project will be the sole responsibility of the researcher without any further compensation from the TAC set-aside funds

B. Authority

Issuing grants is consistent with sections 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 to successful applicants through the NOAA grant award process. The project period for sea scallop research can not predate the current Atlantic sea scallop fishing year, March 1, 2000, and may not exceed a 12-month period. Proposals to fund research started on or after the project period are eligible for consideration. However, if the project is not approved, any research or expenditures related to this project will be the sole responsibility of the researcher without any further compensation from the TAC set-aside funds.

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, state which scallop closed area the research and/or compensation trip is 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 which scallop closed area the research and/or compensation trip is to be conducted in and 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 such agreement must be provided prior to final approval by NOAA.

I. Project Evaluation and Approval

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 that 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 (not listed in order of priority) that also will be considered by the Council and NOAA follow:

1. Evaluation of ways to control predation on scallops;
2. Research to actively manage spat collection and seeding of sea scallops;
3. Social and economic impacts and consequences of closing areas to enhance productivity and improve yield for sea 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. 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 for sea scallops 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. Research that provides more detailed sea 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 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 Committee's 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 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 will provide final approval and authorize vessels to participate in the 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 below. 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 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, state which scallop closed area the research and/or compensation trip is to be conducted in, 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.rdc.noaa.gov/&grants/pdf/*under the title ''Grants Management Forms,'' or by contacting the Council office (see **FOR FURTHER INFORMATION CONTACT**); 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, 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 version at http://www.rdc.noaa.gov/&grants/pdf/ under the title ''Grants Management Forms'', or by contacting the Council office (see **FOR FURTHER INFORMATION CONTACT**).

O. Other Requirements

Evaluations of the impacts of sea scallop research, which involve exemptions to the current fishing regulations, other than those stated in the 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 determinations regarding requirements under the National Environmental Policy Act (NEPA). If required, preparation of a NEPA assessment document (e.g., Environmental Assessment) 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 that 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 Executive Order 12866.

Dated: August 24, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–22203 Filed 8–29–00 8:45 am]

Billing Code: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081400C]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) has cancelled public meetings of its Gulf of Alaska and Bering Sea/Aleutian Islands groundfish plan teams that were scheduled for September 13–15, 2000, at 9 a.m., respectively.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, North Pacific Fishery Management Council; telephone 907–271–2809.

SUPPLEMENTARY INFORMATION: The initial notice published in the **Federal Register** on August 21, 2000 (65 FR 50678).

Dated: August 25, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–22201 Filed 8–29–00; 8:45 am]

Billing Code: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[081800A]

Coral, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Steve Vogel III, Curator, South Carolina Aquarium on behalf of the South Carolina Aquarium (applicant), Charleston, South Carolina. If granted, the EFP would authorize the applicant, with certain conditions, to collect an average of 25 specimens each of numerous species of marine

invertebrates and marine fish from Federal waters off South Carolina for public display. This EFP would extend an approved EFP that expired on June 30, 2000, through June 2002.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on September 29, 2000.

ADDRESSES: Comments on the application must be mailed to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

The application and related documents are available for review upon written request to the address above.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727-570-5305; fax 727-570-5583; e-mail: peter.eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b), concerning exempted fishing.

According to the applicant, the South Carolina Aquarium (SCA), located in Charleston, is a public, non-profit, self-supporting institution devoted to the understanding and conservation of South Carolina's natural aquatic habitats and is a major educational and conservation institution with free admission to school children in groups and extensive field study and outreach programs. The collected specimens will be maintained in the SCA for public display.

The applicant intends, over a period of 2 years, to collect for public display an average of 25 specimens each of 76 species of marine invertebrates and 221 species of marine fish from the EEZ off South Carolina, using a variety of fishing gears and the fish anesthetic, quinaldine.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plans for Coral, Coral Reefs, and Live/Hard Bottom Habitats, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagics, Calico Scallop, and Snapper-Grouper Fisheries of the South Atlantic Region (FMPs). The applicant requires authorization to harvest and possess corals, live rock, golden crab, rock shrimp, red drum, wreckfish, Nassau grouper, warsaw grouper, and jewfish taken from the EEZ off South Carolina. In addition, authorization is required to use quinaldine in a coral area and to possess spiny lobster, bluefish, cobia, king and Spanish mackerel, groupers and snappers, greater amberjack, hogfish and red porgy below the minimum size limit, in excess of established bag limits, or taken with prohibited gear.

The applicant also intends to collect a large number of species that are either not subject to Federal fishery management in the South Atlantic Region or are management unit species under FMPs that contain no management measures restricting possession or harvest. The applicant was referred to NMFS' Highly Migratory Species Division for authorization to collect highly migratory species such as sharks and tunas for public display.

Based on a preliminary review, NMFS finds that this application warrants further consideration and intends to issue an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with South Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard. The applicant requests a 24-month effective period for the EFP.

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

Dated: August 24, 2000.

Bruce C. Morehead

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

[FR Doc 00–22202 Filed 8–29–00; 8:45 am]

Billing Code: 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

August 25, 2000

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 31, 2000

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 25, 2000

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 31, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	1,213,444 dozen.
339/639	1,315,889 dozen.
347/348/647/648	2,926,912 dozen of which not more than 1,356,395 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–22184 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

August 24, 2000

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: August 30, 2000

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 67253, published on December 1, 1999.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 24, 2000

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 30, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevel in Group I	
218/225/317/326	76,389,084 square meters of which not more than 4,249,239 square meters shall be in Category 218(1) [2].
Sublevels in Group II	
338/339 [3](shirts and blouses other than tank tops and tops, knit).	2,964,343 dozen.
338/339(1) [4](tank tops and knit tops).	2,217,659 dozen.
352	7,688,457 dozen.
445/446	1,365,639 dozen.
647	605,063 dozen.
Within Group II Sub-group	
351	1,202,177 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[3] Category 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[4] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–22183 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

August 24, 2000

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 31, 2000

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 340 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54871, published on October 8, 1999.

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 24, 2000

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. This directive concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 31, 2000, you are directed to increase the current limit for

Category 340 to 480,204 dozen,[1] as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal.

The Committee for the Implementation of Textile Agreements has determined that this actions falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–22185 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

August 24, 2000

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 31, 2000

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348 is being increased for swing, reducing the limit for Categories 341/641 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70223, published on December 16, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 24, 2000

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on August 31, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341/641	190,081 dozen.
347/348	637,159 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–22186 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

August 24, 2000

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 31, 2000

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover and shortfall used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 60796, published on November 8, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 24, 2000

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on August 31, 2000, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
611	3,424,227 square meters.

Category	Adjusted twelve-month limit [1]
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [2], 359–H/659–H [3], 359–O [4], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [5], 659–O [6], 831–844 and 846–859, as a group.	733,321,576 square meters equivalent.
Sublevels in Group II	
239	6,150,865 kilograms.
331	520,734 dozen pairs.
336	147,977 dozen.
345	134,756 dozen.
352/652	3,421,641 dozen.
359–H/659–H	5,134,107 kilograms.
435	27,156 dozen.
438	30,233 dozen.
443	45,681 numbers.
445/446	144,985 dozen.
631	5,441,287 dozen pairs.
633/634/635	1,667,128 dozen of which not more than 978,503 dozen shall be in Categories 633/634 and not more than 867,079 dozen shall be in Category 635.
642	840,498 dozen.
659–S	1,729,838 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 350/650, 351, 447/448, 636, 641 and 651, as a group.	78,245,219 square meters equivalent.
Within Group II Subgroup	
341	362,117 dozen.
342	221,518 dozen.
350/650	149,126 dozen.
351	349,454 dozen.
447/448	22,294 dozen.
636	396,201 dozen.
651	506,865 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[5] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–22187 Filed 8–29–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001, at 10:00 a.m. on Tuesday, September 12, 2000. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

DATES: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, D.C. 20042–0001, telephone (202) 761–1448.

Dated: August 24, 2000.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–22088 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, September 28, 2000.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their

laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: August 24, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–22089 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, September 27, 2000.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs or Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 24, 2000.

L.M. Bynum,

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

[FR Doc. 00–22090 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, September 11, 2000.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 24, 2000.

L. M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 00–22091 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary proposes to alter a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarters Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 588–0159.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 21, 2000 to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining

Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS SPM002

SYSTEM NAME:

Pentagon and Federal Building #2 Carpool Locator (February 22, 1993, 58 FR 10227).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Pentagon Parking/National Capital Region Transit Subsidy Program'.

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Parking Management Office, Directorate for Real Estate and Facilities, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.

Decentralized location: Department of Transportation, Transportation Administrative Service Center, TASC, Facilities Service Center, Parking Management Office, 400 Seventh Street, SW, Room P2–0327, Washington, DC 20590.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All Federal or other personnel currently holding DoD parking permits, participating in DoD carpools, or are otherwise authorized to park at the Pentagon or Federal Office Building No. 2 (FOB2). DoD personnel applying for and/or obtaining a public fare transportation subsidy in the National Capital Region.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name, Social Security Number, organizational affiliation of the individual, home address, office work number, home zip code, vehicle tag number, applications for a public fare transportation subsidy, and documentation on vehicular compliance with Federal and state environmental and maintenance standards.'

PURPOSE(S):

Delete entry and replace with 'To administer the Pentagon parking permit program where individuals in a carpool are allocated parking spaces, to manage the DoD National Capital Region Public Transportation Benefit Program involving DoD personnel who are eligible for public fare subsidies, and to operate vehicular environmental compliance and maintenance programs involving certain vehicles which are operating on the Pentagon Reservation or FOB2.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 2674(c)(1); 42 U.S.C. 7418(d); 5 U.S.C. 7905; E.O. 12191; E.O. 13150; and E.O. 9397 (SSN).'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Federal agencies for purposes of administering the DoD National Capital Region Public Transportation Benefit Program and/or verifying the eligibility of individuals to receive a fare subsidy pursuant to a transportation benefit program operated by the DoD or other Federal agencies.

To the Environmental Protection Agency for purposes of certifying that certain vehicles operating on the Pentagon Reservation and FOB2 are in compliance with Clean Air Act requirements.

To state and local governmental authorities for the purpose of reporting vehicular compliance with statutory/regulatory maintenance standards.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system of records.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved by individual's name and Social Security Number, parking permit number, vehicle tag number.'

* * * * *

RECORD SOURCE CATEGORIES:

Applications submitted by individuals for private vehicle and carpool parking permits and transit subsidies; applications submitted through DoD component parking control representatives for individual parking permits for cards; information provided by other federal agencies regarding parking permits and fare subsidies; and from periodic certifications and reports regarding fare subsidies.

* * * * *

DWHS SPM002

SYSTEM NAME:

Pentagon Parking/National Capital Region Transit Subsidy Program.

SYSTEM LOCATION:

Primary location: Parking Management Office, Directorate for Real Estate and Facilities, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.

Decentralized location: Department of Transportation, Transportation Administrative Service Center, TASC, Facilities Service Center, Parking Management Office, 400 Seventh Street, SW, Room P2–0327, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Federal or other personnel currently holding DoD parking permits, participating in DoD carpools, or are otherwise authorized to park at the Pentagon or Federal Office Building No. 2 (FOB2). DoD personnel applying for and/or obtaining a public fare transportation subsidy in the National Capital Region.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, organizational affiliation of the individual, home address, office work number, home zip code, vehicle tag number, applications for a public fare transportation subsidy, and documentation on vehicular compliance with Federal and state environmental and maintenance standards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 2674(c)(1); 42 U.S.C. 7418(d); 5 U.S.C. 7905; E.O. 12191; E.O. 13150; and E.O. 9397 (SSN).

PURPOSE(S):

To administer the Pentagon parking permit program where individuals in a carpool are allocated parking spaces, to manage the DoD National Capital Reigon Public Transportation Benefit Program involving DoD personnel who are eligible for public fare subsidies, and to operate vehicular environmental compliance and maintenance programs involving certain vehicles which are operating on the Pentagon Reservation or FOB2.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Federal agencies for purposes of administering the DoD National Capital Region Public Transportation Benefit Program and/or verifying the eligibility of individuals to receive a fare subsidy pursuant to a transportation benefit program operated by the DoD or other Federal agencies.

To the Environmental Protection Agency for purposes of certifying that certain vehicles operating on the Pentagon Reservation and FOB2 are in compliance with Clean Air Act requirements.

To state and local governmental authorities for the purpose of reporting vehicular compliance with statutory/regulatory maintenance standards.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Electronic file storage, computer print-out reports, and paper forms.

RETRIEVABILITY:

Information is retrieved by individual's name and Social Security Number, parking permit number, vehicle tag number.

SAFEGUARDS:

Records are stored in a secured area accessible only to authorized personnel. Records are accessed by the custodian of the record system and by persons responsible for using or servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Disposition pending (until NARA has approved the disposition schedule for these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Defense Protective Service, Real Estate and Facilities Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Defense Protective Service, Real Estate and Facilities Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Defense Protective Service, Real Estate and Facilities Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should contain the full name of the individual, Social Security Number, current address and telephone number. For personal visits, acceptable identification must be provided such as a driver's license or DoD building pass.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applications submitted by individuals for private vehicle and carpool parking permits and transit subsidies; applications submitted through DoD component parking control representatives for individual parking permits for cards; information provided by other federal agencies regarding parking permits and fare subsidies; and from periodic certifications and reports regarding fare subsidies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–22082 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

National Reconnaissance Office

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DOD.

ACTION: Notice to Add Systems of Records.

SUMMARY: The National Reconnaissance Office is adding four systems of records notices to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 16, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–13

SYSTEM NAME:

Training and Enrollment Support System (TESS).

SYSTEM LOCATION:

Office of Security, Office of Security Training and Education Division, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who have chosen to participate in the security training and education program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, employer, date and place of birth, work addresses, work telephone numbers, facsimile numbers, company, organization, job position, activities (courses) with dates and status, sponsor, program access status, and (occasionally) security investigation date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C.

301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

PURPOSE(S):

The Training and Enrollment Support System is used to manage the nomination and enrollment administrative process for training in security-related courses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Some records may be released to employing organizations to document training.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are stored in secure, a gated facility, guard, badge, and password access protected. Access to the automated information system is limited to a small number of staff members. The system is restricted access and password protected. Use of the data in the records is limited to those of the training staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, to be destroyed when three years old. Earlier disposal is authorized if records are superseded, obsolete, or no longer needed. Records relating to training courses sponsored by other agencies or organizations are also temporary, destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security Training and Education Division National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual on the course nomination forms. Some information is supplied from the Super Message Case Personnel data base.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

QNRO–14

SYSTEM NAME:

Automated Travel Information Processing System.

SYSTEM LOCATION:

Management Services and Operations, Travel Reservation and Accounting Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) military, and civilian personnel who make arrangements for official travel and training, or who have the responsibility to approve such travel and training arrangements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date of birth, employer, employee number, parent organization, office room number, work telephone number, grade or rank, accounting number, and travel orders to include travel dates, times, and locations

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used for automated travel preparation, approval, and accounting. Data occasionally may be used for the compilation of statistics and financial audits and accountability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may, on occasion, be released to other government agencies for travel audits or oversight accountability.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products

RETRIEVABILITY:

Name, organization, travel order number, and accounting number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Although all NRO personnel may access the Automated Travel Information Processing System to make their own individual travel arrangements, access to and use of different categories of records are partitioned and limited to Travel Reservation and Accounting Center staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary and may be destroyed six years after the period of the account.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Travel Reservation and Accounting Center, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the users of the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

QNRO–17

SYSTEM NAME:

NRO Alumni Database.

SYSTEM LOCATION:

Office of Policy, Center for the Study of National Reconnaissance, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former government, military, and contractor personnel, who have participated in certain National Reconnaissance Office (NRO) programs and projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, employer, work telephone number, home address and telephone number, date of birth, e-mail address, program association, organization or affiliation, dates of participation, and security-briefed status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; E.O. 9397 (SSN).

PURPOSE(S):

The database will track the contributing alumni of national reconnaissance programs, particularly those programs retired or declassified. Data will be used for the activities of the declassification of post-Corona programs; the NRO's 40th Anniversary celebration; and as a resource for the NRO Historian's research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Certain limited information concerning the alumni may be shared with other government agencies, the alumni's parent organizations, or with private persons, foundations or companies in order to recognize alumni contributions and achievements or, in some cases, to seek advice.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products

RETRIEVABILITY:

Data is retrieved by individual's name and program name.

SAFEGUARDS:

Records are stored in secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to NRO staff who are involved with the projects for which the database is maintained.

RETENTION AND DISPOSAL:

Records are historical and are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for the Study of National Reconnaissance, Office of Policy, National Reconnaissance Office, 4675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by award nominators and fellow alumni, and by source documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

QNRO–18

SYSTEM NAME:

Document On-line Control System.

SYSTEM LOCATION:

Management Services and Operations, Information Services Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who have custodianship of classified materials

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office and document data such as title, (including series, revision, volume and copy number), security classification, type of media, origin date, security control channels, project codes, manifest information, package information and statistics

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; E.O. 12958; E.O. 12968.

PURPOSE(S):

The Document On-line Control System accounts for the accountable documents and tracks the non-accountable documents, and controls the record of the NRO personnel to whom the document is assigned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be shared with other government agencies to track a specific document or identify the custodian of a particular document.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, office, document title, control number, classification, type of media, transmittal package number, manifest number, date project codes, control channels, and statistics, as well as by scanning the document barcode.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to Information Services Center staff whose official duties require such access. System access is pre-determined and restricted.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Services Center, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained

in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information entered into the system is supplied from the documents themselves and from the transmittal process of which the custodian's name is a part.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–22083 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

National Reconnaissance Office

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DOD.

ACTION: Notice to Add Systems of Records.

SUMMARY: The National Reconnaissance Office is adding three systems of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808-5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 16, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO-5

SYSTEM NAME:

Freedom of Information Act Reading Room Visitors Log.

SYSTEM LOCATION:

Management Services and Operations, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) Freedom of Information Act (FOIA) Reading Room visitors, to include requesters, researchers, historians, and news media personnel. Visitors may be U.S. citizens or foreign nationals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visitor name, Social Security Number, number of hours spent in the reading room, number of photocopies made, and visitors' duplication charges, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act; National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; E.O. 12958; E.O. 12968; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used to compile data needed in the annual statistical report to Congress, and to assess duplication charges, if any.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The fact of a FOIA requester's visit can be disclosed in a subsequent FOIA release; however, no other personal information will be released.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Visitor's name and Social Security Number, and date of visit.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to Information Access and Release Center (IARC) staff whose official duties require such access. Computer file access is electronically limited; paper files are stored in the reading room which is locked when unattended by IARC staff.

RETENTION AND DISPOSAL:

Records are temporary, destroyed when two years old or sooner if no longer needed for administrative use.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Access and Release Center, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social

Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110-3 and NRO Instruction 110-5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the reading room visitors and by Information Access and Release Center staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

QNRO-7

SYSTEM NAME:

Cub Run Elementary School Volunteers Database.

SYSTEM LOCATION:

Cub Run Outreach Program, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who have chosen to participate in the school sponsorship program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, work telephone number, government or contractor affiliation, number of hours worked at the school or on school projects, the volunteers' interest areas or fields of expertise, and community service awards for volunteer activities

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq; 5 U.S.C. Departmental Regulations; E.O. 12820; and E.O. 12333.

PURPOSE(S):

This database records the hours of community service and provides a list of volunteers and their specialties from which the coordinator fills the requests from the school. The system also records the community service awards that volunteers have earned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information will be shared with the Cub Run Elementary School personnel for the assignment of volunteers and for the school's recognition of their contributions.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, area of expertise, dates of service, and type of award.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are electronically limited by password to staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, deleted when obsolete or no longer needed. The system will not be maintained should the program be discontinued.

SYSTEM MANAGER(S) AND ADDRESS:

Cub Run Outreach Program Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing

is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110-3 and NRO Instruction 110-5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

RECORD SOURCE CATEGORIES:

Information is supplied by each volunteer; the school provides a sign-in log which tracks the hours of service of each volunteer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

QNRO-12

SYSTEM NAME:

Technical Library Administration System.

SYSTEM LOCATION:

Technical Library, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who are entitled to use the NRO's technical library services

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, work telephone number, office address, patron identification number and the last four digits of the patron's Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947 as amended, 50 U.S.C. 401 et seq; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

PURPOSE(S):

The collected information supports administrative, circulation, and inventory functions of the Technical Library.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products

RETRIEVABILITY:

The Library staff retrieves patron information by name and patron identification number. A patron may check his own circulation data by using the last four digits of his Social Security Number. A patron, however, may substitute any non-used four digit numbers rather than those of his Social Security Number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to library staff whose official duties require such access. The automated information system is on a protected network and the system itself is password protected.

RETENTION AND DISPOSAL:

Patron information is retained for the duration of NRO assignment and is electronically deleted as part of out-processing. Information regarding the status of an individual's library material(s) is retained for the checkout period only, normally three weeks. Circulation data is retained beyond return of the item(s) only for administrative purposes; at this point the data can be retrieved only by item title.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Technical Library, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110-3 and NRO Instruction 110-5; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715.

RECORD SOURCE CATEGORIES:

Employee names are initially populated from an employee database; library users subsequently provide information when checking out library materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–22085 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice of New Systems of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to add two systems of records notices to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 29, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607–3743.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service records system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on August 16, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated:August 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T1300

SYSTEM NAME:

Disbursing Officer Establishment and Appointment Files.

SYSTEM LOCATION:

Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

Defense Finance and Accounting Service-Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

Defense Finance and Accounting Service-Indianapolis Center, 8899 East 56th Street, Indianapolis, IN 46249–0001.

Defense Finance and Accounting Service-Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Defense Finance and Accounting Service-Columbus Center, 4280 East 5th Avenue, Building 3, Columbus, OH 43218–2317.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members and DoD civilians who are appointed as deputies and individuals appointed as accountable disbursing officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include forms for designation and appointment of deputy and disbursing officer, letters to Federal Reserve banks, and requests for approval and appointment of accountable officers; appointment letters; commencement of disbursing duty letters; Financial Management Service Forms 3023, Specimen Signatures and 5583, Signature Card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 7000.14–R, DoD Financial Management Regulation; DFAS 005, Delegation of Statutory Authority; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used to determine whether an individual has held an accountable position in the past.

To obtain data for the appointment or termination of deputies and the appointment or termination of other than finance officers as accountable officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal Reserve banks to verify authority of the accountable individual to issue Treasury checks.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, optical disk systems, and computer databases.

RETRIEVABILITY:

By individual's name, Social Security Number and accounting and disbursing station number.

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing, and are authorized to use, the record system in performance of their official duties who are properly screened and cleared for need to know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by screening of personnel and registering of visitors.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the disposition, records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Network Operations, Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

Director of Accounting Operations, Defense Finance and Accounting Service-Kansas City Center, 1500 East 95th Street, Kansas City, MO 64197–0001.

Director of Network Operations, Defense Finance and Accounting Service-Indianapolis Center, 8899 East 56th Street, Indianapolis, IN 46249–0001.

Director of Accounting Operations, Defense Finance and Accounting Service-Denver Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Director of Accounting Operations or Network Operations, Defense Finance and Accounting Service-Columbus Center, 4280 East 5th Avenue, Building 3, Columbus, OH 43218–2317.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide sufficient proof of identity, such as full name, Social Security Number, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the records management officer or the Privacy Act Officer at the appropriate DFAS Center.

Individual should provide sufficient proof of identity, such as full name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Finance and accounting officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

T7280

SYSTEM NAME:

Uniformed Services Savings Deposit Program (USSDP).

SYSTEM LOCATION:

Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on a permanent duty assignment outside the United States or its possessions, or members on a temporary duty assignment in support of a contingency operation outside the United States or its possessions, who choose to deposit their current pay and allowances, or a portion thereof, into an account administered by the Defense Finance and Accounting Service (DFAS).

Members who are in a missing status and whose pay and allowances, or a portion thereof, are deposited into an account administered by DFAS are also included.

Dependents, next-of-kin, survivors and former spouses of Uniformed Services Savings Deposit Program (USSDP) participants may be included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records required to administer the account, and account for accrued interest which includes, but is not limited to, the master account records for each depositor, transaction records of monetary data (deposits, withdrawals and adjustments), allotment records, name and Social Security Number change record, settled records, check writing and voucher register data records, interest paid records, quarterly statements records, supplemental address for interest refund records. File also contains correspondence files covering requests for information from members, Federal agencies, spouses, former spouses, dependents, survivors, widows or widowers, next of kin, the American Red Cross, Congress, and other DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub.L. 89–538, Armed Forces Savings Deposits; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1035, Deposits of Savings; and E.O. 9397 (SSN)

PURPOSE(S):

Information is collected to facilitate account maintenance, including updating for deposits, withdrawals, interest accruals, adjustments and summary data, prior to clearing account when the account is terminated.

All records in this system of records are subject to use in authorized computer matching programs with the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration to determine eligibility, entitlements, and addresses of Uniformed Services Deposit Program members.

To the Federal Housing Agency (FHA) to verify eligibility for loans.

To the American Red Cross to use in assisting the member or dependents in emergency situations.

To the widow or widower, dependent, or next-of-kin of deceased members to settle the affairs of the former member.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of record system notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files, on computer magnetic tapes and computer paper printouts, and on microfiche.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing, and authorized to use, the record system in performance of their official duties who are properly screened and cleared for need to know.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the disposition, records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Finance Operations, Code F, Defense Finance and Accounting Service-Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service-Cleveland Center, 1240 Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as name, Social Security Number, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service-Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Information is obtained from the member, spouse, next-of-kin, survivors, and automated system interfaces with other pay systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–22086 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a routine use to the system of records notice to permit the disclosure of information to news media.

DATES: This proposed action will be effective without further notice on September 29, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act System Notice Manager, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 18, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130 ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0360–5 SAPA

SYSTEM NAME:

Biography Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Biographical material including name, position, rank, educational degrees/grade, summary of service, photographs, newspaper clippings, speeches, outstanding achievements may also be included and related documents.''

* * * * *

PURPOSE:

Delete entry and replace with ''To respond to queries from the news Media, and Army agencies/commands relating to individuals concerned.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to entry ''Records may be released to the news media to use for informational purposes.''

* * * * *

A0360–5 SPA

SYSTEM NAME:

Biography Files.

SYSTEM LOCATION:

Military records are located at General Officer Management Office, Office to the Chief of Staff, Army, 200 Army Pentagon, Washington, DC 20310–0200.

Civilian records are located at U.S. Army, Senior Executive Service Office, 111 Army Pentagon, Washington, DC 20310–0111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senior Department of the Army military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical material including name, position, rank, educational degrees/grade, summary of service, photographs, newspaper clippings, speeches, outstanding achievements may also be included and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 360–5, Public Information; Army Regulation 690–900, Chapter 920, Civilian Personnel-Senior Executive Service.

PURPOSE(S):

To respond to queries from the news media, and Army agencies/commands relating to individuals concerned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be released to the news media to use for informational purposes.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media and paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated officials having need therefor in the performance of their assigned duties. Storage areas are locked during non-duty hours.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration approve the retention and disposal schedule, treat records as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, General Officer Management Office, Office of the Chief of Staff, Army, 200 Army Pentagon, Washington, DC 20310–0200 for military records.

Chief, Office of the Secretary of the Army, U.S. Army Senior Executive Service Office, 111 Army Pentagon, Room 2C600 Washington, DC 20310–0111 for civilian records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, General Officer Management Office, Office to the Chief of Staff, Army, 200 Army Pentagon, Washington, DC 20310–0200 for military records or to the Chief, U.S. Army, Senior Executive Service Office, 111 Army Pentagon, Washington, DC 20310–0111 for civilian records.

For verification purposes, individual should provide full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in the system should address written inquiries to the Chief, General Officer Management Office, Office to the Chief of Staff, Army, 200 Army Pentagon, Washington, DC 20310–0200 for military records or to the Chief, U.S. Army, Senior Executive Service Office, 111 Army Pentagon, Washington, DC 20310–0111 for civilian records.

For verification purposes, individual should provide full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; clippings from published media; published media; published biographical data from Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–22084 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Alter two Systems of Records.

SUMMARY: The Department of the Navy proposes to alter two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alterations add a routine use to permit disclosure of information under the Victim's Rights and Restitution Act of 1990.

DATES: This action will be effective on September 29, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on August 16, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: August 24, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01000-5

SYSTEM NAME:

Naval Clemency and Parole Board Files *(April 14, 1999, 64 FR 18410).*

CHANGES:

* * * * *

AUTHORITY:

Delete entry and replace with '10 U.S.C. 874(a), 952-954; 42 U.S.C. 10601 et seq.; Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures, SECNAVINST 5815.3H, Department of the Navy Clemency and Parole Systems; and E.O. 9397 (SSN).'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add new paragraph to read 'To victims and witnesses of a crime for purposes of providing information regarding the investigation and disposition of an offense (Victim's Rights and Restitution Act of 1990).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Naval Council of Personnel Boards, Department of the Navy, 720 Kennon Street SE, Room 309, Washington Navy Yard, DC 20374-5023.'

* * * * *

N01000-5

SYSTEM NAME:

Naval Clemency and Parole Board Files.

SYSTEM LOCATION:

Naval Clemency and Parole Board, 720 Kennon Street SE, Room 308, Washington Navy Yard, DC 20374-5023

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members or former members of the Navy, Marine Corps, or Coast Guard whose cases have been or are being considered by the Naval Clemency and Parole Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains individual applications for clemency and/or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, or on parole; correspondence between the individual or his counsel and the Naval Clemency and Parole Board or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; records of trial; and a summarized record of the proceedings of the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 874(a), 952-954; 42 U.S.C. 10601 et seq.; Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures, SECNAVINST 5815.3H, Department of the Navy Clemency and Parole Systems; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in conjunction with periodic review of the member's or former member's case to determine whether or not clemency or parole is

warranted. The file is referred to in answering inquiries from the member or former member or their counsel. The file is referred to by the Naval Discharge Review Board and the Board for Correction of Naval Records in conjunction with their subsequent review of applications from members or former members. The file is also used by counsel in connection with representation of members or former members before the Naval Clemency and Parole Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information regarding the investigation and disposition of an offense (Victim's Rights and Restitution Act of 1990).

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Files are kept within the Naval Clemency and Parole Board administration office. Access during business hours is controlled by Board personnel. The office is locked at the close of business. Computerized data base is password protected.

RETENTION AND DISPOSAL:

Files are transferred to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 one year after discharge of individual from the naval service. Files are destroyed after 25 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, 720 Kennon Street SE, Room 309, Washington Navy Yard, DC 20374-5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, 720 Kennon Street SE, Room 309, Washington Navy Yard, DC 20374-5023.

Requests should contain full name and Social Security Number and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, 720 Kennon Street SE, Room 309, Washington Navy Yard, DC 20374-5023.

Requests should contain full name and Social Security Number and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the file is obtained from the member or former member or from those acting in their behalf, from confinement facilities, from military commands and offices, from personnel service records and medical records, and from civilian law enforcement agencies or individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N01070-3

SYSTEM NAME:

Navy Personnel Records System *(September 2, 1999, 64 FR 48148).*

CHANGES:

* * * * *

AUTHORITY:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 42 U.S.C. 10601 et seq., Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add new paragraph to read 'To victims and witnesses of a crime for purposes of providing information regarding the investigation and disposition of an offense (Victim's Rights and Restitution Act of 1990).'

* * * * *

N01070-3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Primary locations: Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary locations: Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 42 U.S.C. 10601 et seq., Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease, of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements, including Department of Labor and state unemployment agencies for unemployment compensation for ex-service members.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To victims and witnesses of a crime for purposes of providing information regarding the investigation and disposition of an offense (Victim's Rights and Restitution Act of 1990).

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Transfer to Naval Reserve Personnel Center, New Orleans, LA 70149 six months after discharge, retirement, or death of service member. Naval Reserve Personnel Center will forward to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5000. Transfer to the National Archives and Records Administration 75 years after separation of service member. [Note: An exception is made for copies of officer fitness reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.]

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Navy Personnel Command, Records Review Room, Building 769, Room K615, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Navy Personnel Command, Records Review Room, Building 769, Room K615, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–22087 Filed 8–29–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 29, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 25, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Criteria for Distribution of the $134 Million FY 2000 Appropriation for School Improvement.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52;

Burden Hours: 1,248.

Abstract: To receive funds provided for school improvement in the FY 2000 appropriation, a State must amend its State Title I plan to include (1) criteria showing which of its LEAs will receive funds; (2) criteria for determining how much each LEA will recieve; and (3) measures to assure that recipients of funds implement public school choice consistent with the statute.

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 4050, Regional Office Building 3, Washington, D.C. 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 Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–22177 Filed 8–29–00; 8:45 am].

BILLING CODE 4000–01–P.

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 29, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 25, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: State Library Agencies Survey.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 51; Burden Hours: 612.

Abstract: State library agencies are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. The purpose of this survey is to provide state and federal policymakers with information about SILAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks, number and types of outlets, direct services to the public, public service hours, type and size of collections, service and development transactions, staffing patterns, and income and expenditures.

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 4050, Regional Office Building 3, Washington, D.C. 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 Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–22178 Filed 8–29–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 29, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 25, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Assessment of Educational Progress (NAEP) Year 2001 Field Test and Year 2002 Main Assessment of Reading and Writing.

Frequency: Annually.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 7,250;

Burden Hours: 7,250.

Abstract: The Congressionally-mandated 2002 National Assessment of Educational Progress will assess writing and reading knowledge among 4th, 8th and 12th graders. To provide contextual information to intrepret the assessment information, relevant background characteristics of the students and their schools and teachers are gathered as well. The clearance package provides all of the background questions and supporting information for the field test and the main study. The results of the main study will be used to provide descriptive information about programs and practices in the teaching of reading and writing; suggest relationships between characteristics and assessment results; serve as a basis for monitoring change over time.

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 4050, Regional Office Building 3, Washington, D.C. 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 Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–22179 Filed 8–29–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA99–3–000]

Alcoa Power Generating, Inc.; Notice of Filing

August 24, 2000.

Take notice that on August 2, 2000, Alcoa Power Generating, Inc., submitted revised standards of conduct in response to the Commission's July 3, 2000, Order on Standards of Conduct. 88 FERC ¶ 62,173 (1999).

Alcoa Power Generating, Inc. states that it served copies of the filing on the service list in this proceeding.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions and protests should be filed on or before September 8, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22109 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–332–000]

ANR Pipeline Company; Notice of Technical Conference

August 24, 2000.

On June 15, 2000, ANR Pipeline Company (ANR) filed in compliance with Order No. 637. Several parties have protested various aspects of ANR's filing. Take notice that the technical conference to discuss the various issues raised by ANR's filing will be held Wednesday, September 20, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. This technical conference may extend to Thursday, September 21, 2000. Parties protesting aspects of ANR's filing should be prepared to discuss alternatives.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22112 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–500–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2000.

Take notice that on August 17, 2000, Chandeleur Pipe Line Company tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2000.

Second Revised Sheet No. 3
First Revised Sheet No. 3A
First Revised Sheet No. 6
First Revised Sheet No. 13
Fourth Revised Sheet No. 19A
Third Revised Sheet No. 19B
First Revised Sheet No. 19C
Second Revised Sheet No. 31
Original Sheet No. 31A
Second Revised Sheet No. 32
Second Revised Sheet No. 33
Second Revised Sheet No. 34
Third Revised Sheet No. 70
Original Sheet No. 71
Original Sheet No. 72
Original Sheet No. 73
Original Sheet No. 74
First Revised Sheet No. 90
First Revised Sheet No. 94
First Revised Sheet No. 98

Chandeleur Pipe Line Company states that the purpose of this filing is to give Chandeleur Pipe Line Company the ability to negotiate rates as provided for by the Commission in its Policy Statement (RM95–6–000, *et al.*)

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22102 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC00–128–000 and ER96–25–020]

Coral Power, L.L.C.; Notice of Filing

August 23, 2000.

Take notice that on August 18, 2000, Coral Power, L.L.C., tendered for filing a notice of change in status and an application under section 203 of the Federal Power Act for approval of the transfer of a 30 percent interest in Coral Power to InterGen N.V., a joint venture between Shell Generating (Holding) B.V. and Bechtel Enterprises Energy, B.V.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 8, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22099 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT–00–34–001]

Dauphin Island Gathering Partners; Notice of Compliance Filing

August 24, 2000.

Take notice that on August 16, 2000, Dauphin Island Gathering Partners (DIGP) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 7, 2000. The tariff sheets corrected several minor errors on DIGP's negotiated rates tariff sheets that were related to the nonconforming service agreements filed in this docket. The following tariff sheets are proposed to become effective on August 7, 2000:

Third Revised Sheet No. 9
Second Revised Sheet No. 10

DIGP states that on July 7, 2000, it filed tariff sheets to reflect fifteen nonconforming agreements. By Letter Order dated July 28, 2000 (Letter Order), the Commission accepted the nonconforming agreements and the tariff sheets reflecting the shippers listed in those agreements. The Letter Order further directed DIGP to file within 10 days tariff sheets setting forth all negotiated rates. Since the filing of a letter in response, DIGP has discovered three minor corrections on the negotiated rate tariff sheets.

DIGP states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–22101 Filed 8–29–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–499–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2000.

Take notice that on August 17, 2000, Destin Pipeline Company, L.L.C. (Destin) tendered for filing the following tariff sheet:

Second Revised Sheet No. 35

The purpose of the filing is to reflect a change in the World Wide Web address of Destin's Internet Web Site.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc/fed/us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–22105 Filed 8–29–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–386–001]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2000.

Take notice that on August 17, 2000, Destin Pipeline Company, L.L.C. (Destin) tendered for filing the following tariff sheet:

Substitute Second Revised Sheet No. 96

The purpose of the filing is to reflect the changes required by the Commission pursuant to letter order issued August 11, 2000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–22106 Filed 8–29–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3466–000]

IGI Resources, Inc.; Notice of Filing

August 24, 2000.

Take notice that on August 23, 2000, IGI Resources, Inc. (IGI), tendered for filing a Notice of Cancellation of its FERC Electric Rate Schedule No. 1. IGI requests that the Commission act in an expedited manner and accept the notice of cancellation by no later than August 31, 2000, to be effective August 23, 2000.

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, 8888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 5, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22149 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–000]

Koch Gateway Pipeline Company; Notice of Technical Conference

August 24, 2000.

On June 15, 2000, Koch Gateway Pipeline Company (Koch), filed in compliance with Order No. 637. Several parties have protested various aspects of Koch's filing. Take notice that a technical conference to discuss the various issues raised by Koch's filing will be held Wednesday, September 20, 2000, at 9:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. This technical conference may extend to Thursday, September 21, 2000. Parties protesting aspects of Koch's filing should be prepared to discuss alternatives.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22111 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–11–001]

Midcoast Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2000.

Take notice that on August 17, 2000, Midcoast Gas Transmission, Inc. (MIT), filed the following tariff sheet to be included in its FERC Gas Tariff, Second Revised Volume No. 1:

Sub Fourth Revised Sheet No. 150

MIT states that the primary purpose of filing the Revised Tariff Sheet is to correct certain language in the indicated tariff sheet, which was filed on July 20, 2000 in FERC Docket No. MT00–11–000, updating MIT's tariff to reflect recent changes in shared personnel and facilities, and to reflect minor housekeeping changes for clarification of MIT's FERC Gas Tariff.

Pursuant to section 154.7(a)(7) of the Commission's Regulations, MIT respectfully requests waiver of any additional requirement of the Regulations in order to permit the tendered tariff sheet to become effective September 18, 2000, as submitted.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference R oom. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22104 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–501–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2000.

Take notice that on August 18, 2000, Mojave Pipeline Company (Mojave), tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets to be effective March 26, 2000 and June 1, 2000.

Second Revised Volume No. 1

First Revised Sheet No. 111
First Revised Sheet No. 113
First Revised Sheet No. 114
First Revised Sheet No. 116
First Revised Sheet No. 119
First Revised Sheet No. 241

Mojave states that the tariff sheets are being submitted, pursuant to Order No. 637, to (i) remove the maximum rate cap for capacity release transactions of less than one year, (ii) modify the right-of-first-refusal provisions applicable to long term firm contracts at the maximum rate, and (iii) revise the electronic bulletin board description to refer to Mojave's internet Web site.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22107 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–103–000]

Morgan Stanley Capital Group Inc., Complainant, v. New York Independent System Operator, Respondent; Notice of Filing

August 24, 2000.

Take notice that on August 23, 2000, Morgan Stanley Capital Group Inc. (MSCG), tendered for filing a complaint pursuant to section 206 of the Federal Power Act against the New York Independent System Operator (NYISO) requesting that the Commission order NYISO immediately to limit the two- and five-year Transmission Congestion Contracts (TCC) products it intended to offer in its Autumn TCC Auction, beginning September 1, 2000, to no more than six-month terms until market flaws and the transitional, uncertain and unstable nature of the NYISO market have been addressed. MSCG alleges such long-term TCC products offered at this time will serve only to exacerbate

problems caused by the existing software and market flaws. Accordingly, MSCG requests fast track processing of its complaint by the Commission.

Copies of the filing were served upon the NYISO and other interested parties.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 5, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties of 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). Answers to the complaint shall also be due on or before September 5, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22150 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–006]

Questar Pipeline Company; Notice of Tariff Filing

August 24, 2000.

Take notice that on August 18, 2000, pursuant to 18 CFR 154.7 and 154.203, and as provided by Section 30 (Negotiated Rates) to the General Terms and Conditions of Part 1 of Questar Pipeline Company's (Questar) FERC Gas Tariff, Questar filed a tariff filing to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Sixth Revised Sheet No. 7 and Original Sheet No. 7A revise Questar's Tariff to implement a new negotiated-rate transportation service agreement between Questar and River Gas Corporation. Questar requested waiver of 18 C.F.R. 154.207 so that the tendered tariff sheets may become effective August 1, 2000.

A copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22108 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000 and Docket No. EL00–98–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondent; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Initiation of Proceeding and Refund Effective Date

August 24, 2000.

Take notice that on August 23, 2000, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL00–98–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL00–98–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22098 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3473–000]

Sempra Energy Trading Corp.; Notice of Filing

August 24, 2000.

Take notice that on August 23, 2000, Sempra Energy Trading Corp. (SET) tendered for filing pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, SET's Rates Schedules FERC Nos. 12 and 13, providing for the sale of electric energy and ancillary services to San Diego Gas & Electric Company (''SDG&E''), an affiliate of SET.

SET states that its currently effective rate schedules do not provide for sales to SDG&E. It further states that SDG&E has, until recently been required by the California Public Utilities Commission (CPUC) to purchase all of the power required for its bundled retail customers through the California Power Exchange Corporation (the PX). Recently, however, the CPUC has authorized other utilities to make bilateral purchases in order to increase their ability to hedge against volatile prices. The utilities' purchases under such contracts are to be deemed reasonable by the CPUC, SET states, if they have completed certain specified pre-clearance procedures. According to SET, SDG&E has applied for such authorization in an emergency motion filed with the CPUC on August 9, 2000.

The purpose of the instant filing, SET states, is to enable SET to make sales of energy and ancillary services to SDG&E on a bilateral basis, under the conditions approved by the CPUC, or, alternative, under the requirement of open, competitive bidding contained in the CPUC's Affiliate Rules. In order to respond to an August 22, 2000 request for bids by SDG&E, SET asks for Commission action on its filing by September 5, 2000, and proposes an effective date for the tendered rate schedules of September 1, 2000.

SET states that it has served a copy of its filing on the CPUC.

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 August 31, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22151 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–580–002 and CP99–582–003]

Southern LNG Inc.; Notice of Petition to Amend

August 24, 2000.

Take notice that on August 15, 2000, Southern LNG Inc. (Southern LNG), 1900 Fifth Avenue North, P.O. Box 2563, Birmingham, Alabama 35202–2563, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) for limited amendment to the Order Issuing Certificate, section 3 Authorization, And Denying Request For Rehearing issued in this proceeding on March 16, 2000.[1] Southern LNG requests the Commission's authorization for limited modifications to the sendout system (Sendout Modification) at the liquefied natural gas (LNG) import terminal on Elba Island, in Chatham County, Georgia (Elba Island Terminal). The Sendout Modification will increase the peak vaporization capacity from 540 Mmcf/d to 675 Mmcf/d.

Copies of this filing are on file with the Commission and are available for public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). Any questions regarding the application may be directed to Patrick B. Pope, General Counsel, P.O. Box 2563, Birmingham, Alabama 35202–2563, (205) 325–7126.

The Sendout Modification is required to enhance the flexibility and reliability of firm service at Elba Island Terminal, because it will enable the terminal to receive LNG from various sources. El Paso Merchant Energy-Gas, Ltd. (Merchant Energy), which holds the capacity at Elba Island Terminal, now anticipates importing LNG purchased from Enron Americas LNG Company, in addition to Point Fortin LNG Exports Ltd., with supplies coming from various foreign production areas. The Sendout Modification will not alter the marine transfer or storage systems at the Elba Island Terminal. Southern LNG proposes the following modifications to the sendout system:

- Remove five existing Ryan Industries LNG vaporizers with capacity of 108 Mmcf/d each, having submerged combustion, six-burner configuration and replacing these existing units with five state-of-the-art, natural gas-fired vaporizers with high efficiency, single burner configuration and submerged combustion water bath heaters. The new vaporizers will provide a sendout rate of up to 135 Mmcf/d per unit. In addition, Southern LNG will install a spare secondary LNG pump and associated transfer piping.
- Installing facilities to control a heating value of vaporized LNG delivered at the tailgate of the Elba Island Terminal. The imported LNG cargoes may have varying heating values, some of which may exceed the maximum in Southern LNG's tariff of 1,075 Btu per standard cubic foot (scf). Therefore, Southern LNG has developed two design alternatives for Btu stabilization facilities: (1) Injection of 2% Nitrogen into the Sendout Stream which will allow receipt of approximately 1,090 Btu/scf, and (2) injection of 3.8% air which will allow receipt of approximately 1,117 Btu/scf. Southern LNG will propose a final design for Btu stabilization after further progress in the on-going discussions with downstream shippers.

The Sendout Modification will not involve any greenfield construction. The construction will be confined to an onshore area within previously disturbed and currently maintained property owned by Southern LNG and addressed in the environmental assessment (EA) and March 16, 2000 order.

Southern LNG states that no subsidy from the existing customers exists in this proposal. Southern LNG proposes to roll the cost of the Sendout Modification into initial rates approved in the March 16, 2000 order. The rolled-in rate treatment allocates 100% of the cost to Merchant Energy, who holds 100% of the capacity.

The estimates of the capital cost for the Sendout Modification is $32,698,837 using air injection, and $42,197,710 using nitrogen injection, with the decision on the method to be made after further discussions. The cost and rate design effects of these two options are shown in Exhibit P of the amendment.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 14, 2000, file with the Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervener status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other interveners. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must serve copies of comments or any other filing it makes with the Commission to every other intervener in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents

[1] On April 17, 2000, Southern LNG filed a motion for clarification of the authorization in the March 16, 2000 order in Docket No. CP99–579–002 which is being considered in conjunction with this petition to amend.

filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by comments or those requesting intervener status.

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, as amended, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this Application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds a grant of the requested authorization 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 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 Southern LNG to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22100 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–496–000]

Total Peaking Services, L.L.C., Notice of Proposed Changes in FERC Gas Tariff

August 24, 2000.

Take notice that on August 15, 2000, Total Peaking Services, L.L.C. (TPS), tendered for filing various substitute original tariff sheets to address several minor housekeeping matters, specifically, changing Total Peaking's address, creating a new Internet Web Site, and correcting several typographical errors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22103 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Reservoir Drawdown and Soliciting Comments, Motions To Intervene, and Protests

August 24, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for approval of maintenance activities including reservoir drawdown and sediment removal from Interbay Reservoir during September and October 2000.

b. *Project No.:* 2079–041.

c. *Date Filed:* August 3, 2000.

d. *Applicant:* Placer County Water Agency.

e. *Name of Project:* Middle Fork American River.

f. *Location:* The project is located on the Middle Fork American and Rubicon Rivers, in Placer and El Dorado Counties, California. The project occupies lands of the Tahoe and Eldorado National Forests.

g. *Filed Pursuant to:* Section 12 of the Commission's Regulations.

h. *Applicant Contact:* Mr. Stephen J. Jones, Placer County Water Agency, P.O. Box 667, Foresthill, California 95631.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon at 202–208–7774, or e-mail address *diana.shannon@ferc.fed.us*

j. *Deadline for filing comments and or motions:* September 20, 2000.

All documents (original and eight copies) should be filed with Mr. David P. Boeregers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426

Please reference the following number, P–2079–041, on any comments or motions filed.

k. *Description of Proposal:* The licensee requests approval to remove about 70,000 cubic yards of sediment from the small 7-acre Interbay Reservoir during September-October 2000. The sediment was deposited during high flows in January 1997. The licensee plans to maintain the required minimum flow during the maintenance work and will take necessary actions to minimize impacts to water quality. The licensee has consulted with the resource agencies, including the U.S. Forest Service and the Regional Water Quality Control Board, regarding the proposed maintenance work.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at *http:www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 285.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to

intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22110 Filed 8–29–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6861–1]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at 260–2740, or email at *Farmer.sandy@epa.gov,* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1894.02; Recordkeeping and Reporting Requirements for the Secondary Aluminum Production—NESHAP; in 40 CFR part 63.9, 63.10 and 63.1500; was approved 07/14/2000; OMB No. 2060–0433; expires 07/31/2003.

EPA ICR No. 1093.06; NSPS for Surface Coating of Plastic Parts for Business Machines; in 40 CFR part 60, subpart TTT; was approved 07/25/2000; OMB No. 2060–0162; expires 07/31/2003.

EPA ICR No. 1160.06; NSPS for Wool Fiberglass Insulation Manufacturing Plants; in 40 CFR part 60, subpart PPP, and NESHAP–MACT–Wool Fiberglass Manufacturing Plants; in 40 CFR part 63, subpart NNN; was approved 07/25/2000; OMB No. 2060–0114; expires 07/31/2003. This ICR represents a consolidation of activities previously covered by OMB numbers 2060–0114 and 2060–0359.

EPA ICR No. 1560.06; National Water Quality Inventory Reports (TMDL) Final Rule—Clean Water Act Section 305(b), 303(d), 314(a), and 106(a); in 40 CFR part 130.10; was approved 07/10/2000; OMB No. 2040–0071; expires 07/31/2003.

EPA ICR No. 0276.10; Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only; in 40 CFR part 172; was approved 06/23/2000; OMB No. 2070–0040; expires 08/31/2000.

EPA ICR No. 1949.01, Performance Track Program Level One: The Environmental Achievement Track; was approved 06/23/2000; OMB No. 2010–0032; expires 06/30/2003.

Withdrawn and Continued

EPA ICR No. 0877.07; Environmental Radiation Ambient Monitoring System (ERAMS), OMB No. 2060–0015; was withdrawn and continued on 06/26/2000.

Action Withdrawn

EPA ICR No. 1911.01; Data Acquisition for Anticipated Residue and Percent Crop Treated; this ICR was withdrawn from OMB 07/14/2000.

Comments Filed

EPA ICR No. 1656.08; Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances (Proposed Rule for Distribution of Off-site Consequence Analysis Information) under the Clean Air Act, Section 112(r); on 07/24/2000 OMB filed comment.

EPA ICR No. 1246.07; Reporting and Recordkeeping for Asbestos Abatement Worker Protection (Proposed Rule: State and Local Amendments); on 07/20/2000 OMB filed comment.

Short Term Extensions

EPA ICR No. 1442.16; Land Disposal Restriction (LDR) Phase IV: Treatment Standards for Wastes from Toxicity Characteristic Metals, Mineral Processing Secondary Materials and the Exclusion of Recycled Wood; in 40 CFR parts 268.7, 268.40 and 268.44; OMB No. 2050–0085; on 07/24/2000 OMB extended the expiration date through 10/31/2000.

EPA ICR No. 1572.04; Hazardous Waste Specific Unit Requirements, and Special Waste processes and Types; in 40 CFR parts 261, 264, 265, and 266, subpart F; OMB No. 2050–0050; on 06/21/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1725.02; Marine Engine Manufacturers Production Line Testing Reporting and Recordkeeping Requirements; in 40 CFR part 91; OMB No. 2060–0323; on 07/12/2000 OMB extended the expiration date through 12/31/2000.

EPA ICR No. 1799.01; NESHAP for Recordkeeping and Reporting Requirements for the Mineral Wool Production; in 40 CFR part 63, subpart A and subpart DDD; OMB No. 2060–0362; on 07/18/2000 OMB extended the expiration date through 10/31/2000.

EPA ICR No. 1080.09; NESHAP for Benzene Emissions from Benzene Storage Vessels, and Coke By-Product Recovery Plants; in 40 CFR part 61, subparts L, and Y; OMB No. 2060–0185; on 07/27/2000 OMB extended the expiration date through 01/31/2001.

EPA ICR No. 1432.17; Recordkeeping and Periodic Reporting of the Production, Import, of Ozone-Depleting Substances; OMB No. 2060–0170; on 07/27/2000 OMB extended the expiration date through 01/31/2001.

EPA ICR No. 1726.02; Marine Engine Manufacturer In-Use Emissions Testing Program; in 40 CFR part 91, subpart I, OMB No. 2060–0322; on 07/12/2000 OMB extended the expiration date through 12/31/2000.

EPA ICR No. 0794.08; Notification of Substantial Risk of Injury to Health and the Environment under TSCA Section 8(e); OMB No. 2070–0046; on 06/22/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1780.01; Voluntary Cover Sheet for TSCA Submissions; OMB No. 2070–0156; on 06/22/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 0922.05; Data Call-In for Special Review Chemicals; in 40 CFR parts 155, 158, and 160; OMB No. 2070–0057; on 06/29/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1001.06; Polychlorinated Biphenyls (PCBS Exclusions, Exemptions, and Use Authorizations; in 40 CFR part 761; OMB No. 2070–0008; on 07/12/2000 OMB extended the expiration date through 11/30/2000.

Dated: August 25, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–22164 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6860–7]

Request for Applications for the National Environmental Education Advisory Council

Due Date: September 24, 2000.

SUMMARY: Section 9 (a) and (b) of the National Environmental Education Act of 1990 (Public Law 101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides advice, consults with, and makes recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the Act. EPA is requesting nominations of candidates for membership on the Council. The Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members
- Colleges and universities—two members
- Not-for-profit organizations involved in environmental education—two members
- State departments of education and natural resources—two members
- Business and industry—two members
- Senior Americans—one member

Members are chosen to represent the various geographic regions of the country, and the Council shall have minority representation. The professional backgrounds of Council members include scientific, policy, and other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period, which runs from November to November of each calender year. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator.

There are currently six (6) vacancies on the Advisory Council that must be filled.

- Business and Industry'one vacancy (Nov. 2000–Nov. 2003)
- College and University'one vacancy (Nov. 2000–Nov. 2002)
- State Department of Natural Resources'one vacancy (Nov. 2000–Nov. 2003)
- Non-Profit Organization'two vacancies (Nov. 2000–Nov. 2002 and Nov. 2000–Nov. 2003)
- Primary/Secondary Education'one vacancy (Nov. 2000–Nov. 2002)

EPA particularly seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

- Integrating environmental education into state and local education reform and improvement;
- State, local and tribal level capacity building;
- Cross-sector partnerships; leveraging resources for environmental education;
- Design and implementation of environmental education research
- Professional development for teachers and other education professionals; and
- Targeting under-represented audiences, including low-income and multi-cultural audiences, senior citizens, and other adults.

Additional Considerations

The Council is looking for individuals who demonstrate the following:

- ability to make the time commitment
- strong leadership skills
- strong analytical and writing skills
- ability to stand apart and evaluate programs in an unbiased fashion
- team players
- conviction to follow-through and to meet deadlines
- ability to review items on short notice

DATES: Applications to fill the existing vacancies on the Council must be submitted no later than September 24, 2000. The application must include the following:

- Name/address/phone/e-mail of applicant
- 1–2 page resume (Please do not exceed 2 pages.)
- Two (2) letters of support for the applicant
- One (1) page statement of ''How the candidate is qualified.'' This must not exceed one (1) page.
- One (1) page statement by the applicant on his/her personal perspective on environmental education. This must not exceed one (1) page.

ADDRESSES: Submit nominations to Ginger Keho, Advisory Council Coordinator, Office of Environmental Education, Office of Communications, Education and Media Relations (1704), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Keho at the above address, or call (202) 260–4129. E-mail address: keho.ginger@epa.gov

SUPPLEMENTARY INFORMATION: The Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

Dated: August 11, 2000.

John Kasper,

Acting Deputy Associate Administrator, Office of Communications, Education and Media Relations.

[FR Doc. 00–22165 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50871; FRL–6739–5]

EXPERIMENTAL USE PERMIT; CRY1AC SOYBEAN RECEIPT OF AMENDMENT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an amendment to experimental use permit (EUP) 524–EUP–91 for the Bacillus thuringiensis Cry1Ac protein and the genetic material for its production (vector PV–GMBT01 and vector PV–GMBT02) in soybean from Monsanto Company. The Agency has determined that the amendment may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this amendment.

DATES: Comments, identified by docket control number OPP–50871, must be

received on or before September 29, 2000.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50871 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0515; e-mail address: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in plant-pesticides or who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–50871. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50871 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50871. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA has received from Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198, an amendment to their EUP for Bacillus thuringiensis Cry1Ac protein and the genetic material necessary for its production (vector PV–GMBT01 and vector PV–GMBT02) in soybean (524–EUP–91). Notice of the original issuance of this EUP was published in the **Federal Register** on June 22, 2000 (65

FR 38828) (FRL–6592–5). The new program increases the acreage by 22.0 acres and adds test sites in Hawaii and Puerto Rico. All soybeans will be grown under containment procedures. Plant material and seed produced will be destroyed or used for experimental purposes only.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application to amend their EUP and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an amendment will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 17, 2000.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–22167 Filed 8–29–00]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6860–5]

Clean Air Act Advisory Committee Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday, September 22, 2000, from approximately 8:30 a.m. to 3:30 p.m. at the Radisson Hotel, 11 East Kellogg Blvd., Saint Paul, Minnesota. Seating will be available on a first come, first served basis. Three of the CAAAC's Subcommittees (Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Energy, Clean Air and Climate Change Subcommittee) will hold meetings on Thursday, September 21, 2000 from approximately 8:30 a.m. to 11:30 a.m. at the Radisson Hotel, the same location as the full Committee.

In addition, there will be an awards ceremony for recipients of the Year 2000 Clean Air Excellence Awards. The ceremony, which is open to the public, will be held at the Science Museum of Minnesota, Saint Paul, Minnesota from approximately 5:30 p.m. to 8:30 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, N.W., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: Energy, Clean Air and Climate Change—Jeanne Briskin, 202–564–9135; Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; and Linking Transportation, Land Use and Air Quality Concerns—Lucie Audette, 734–668–4438.

Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *www.epa.gov/oar/caaac/*

Dated: August 24, 2000.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 00–22160 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30480A; FRL–6740–3]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by AgraQuest, Inc., to conditionally register the pesticide products Serenade™ Biofungicide Wettable Powder and QST 713 Technical containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8077; e-mail address: cerrelli.susanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this

document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''fact sheet.''

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30480A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Bacillus subtilis* strain QST 713, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus subtilis* strain QST 713 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Approved Applications

1. *Applications approved and published.* EPA published a notice in the **Federal Register** of June 16, 1999 (64 FR 32231) (FRL–6084–5), announcing that AgraQuest, Inc., 1105 Kennedy Place, Davis, CA 95616), (now located at 1530 Drew Ave., Davis, CA), had submitted an application to conditionally register the pesticide product, QST 713 Technical, microbial fungicide (EPA File Symbol 69592–L), containing the QST 713 strain of dried *Bacillus subtilis* at 5%. Presently, the QST 713 Technical, microbial fungicide contains the QST 713 strain of *Bacillus subtilis* at 14.6%, an active ingredient not included in any previously registered product.

2. *Application approved but not published.* AgraQuest, Inc., submitted an application to EPA to register the pesticide product Serenade™ Biofungicide Wettable Powder (EPA File Symbol 69592–U) containing the same chemical at 14.6%. However, since the notice of receipt of the application to register the product as required by section 3(c)(4) of FIFRA, as amended, did not publish in the **Federal Register**, interested parties may submit comments on or before September 29, 2000 for this product only.

The applications were conditionally approved on June 20, 2000 for an end-use product and a technical listed below:

1. Serenade™ Biofungicide Wettable Powder, for use on cherries, cucurbits, grapes, hops, leafy vegetables (except Brassica), peanuts, pepper, potato, tomato, and walnuts (EPA Registration Number 69592–4)

2. QST 713 Technical, for use in manufacturing and formulating end-use products to control various fungal plant pathogens and terrestrial use (EPA Registration Number 69592–5).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 17, 2000.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–21921 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00669; FRL–6596–1]

Pesticides; The Non-Dietary Exposure Task Force Developing Indoor Residential Exposure Data for Synthetic Pyrethroids, Pyrethrum and Synergists

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This Pesticide Registration (PR) Notice announces an industry-wide task force to jointly develop residential indoor exposure data for pesticides containing one or more of the active ingredients: synthetic pyrethroids, pyrethrum and synergists. This Notice explains why these data are being developed and how registrants may wish to participate in the development of these data by joining the Task Force. The Notice identifies an EPA and Task Force contacts for persons wanting further information under the **FOR FURTHER INFORMATION CONTACT** section.

DATES: Comments, identified by docket control number OPP–00669, must be received on or before September 29, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00669 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Alan Dixon (7505C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7237; fax number: (703) 305–6920; e-mail address: dixon.alan@epa.gov.

Paul Keane, Chairman, Steering Committee, Non-Dietary Exposure Task Force, 47 West Division St., Suite 389, Chicago, IL 60610; telephone number: (312) 664–4781; fax number: (312) 664–0728; e-mail address: Pkeane2100@aol.com.

Tom Osimitz, Chairman, Technical Committee, Non-Dietary Exposure Task Force, S.C. Johnson & Son, Inc., 1525 Howe St., M.S. 122, Racine, WI 53403; telephone number: (414) 260–2669; fax number: (414) 260–0186; e-mail address: tgosimit@scj.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to:

1. Companies or persons responsible for registered pesticide products containing one or more of the active ingredients synthetic pyrethroids, pyrethrum and synergists.

2. Companies or persons responsible for seeking registration of pesticide products containing one or more of the active ingredients synthetic pyrethroids, pyrethrum and synergists.

3. Companies or persons responsible for reregistering pesticide products containing one or more of the active ingredients synthetic pyrethroids, pyrethrum and synergists.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand.* You may request a faxed copy of the PR Notice titled ''The Non-Dietary Exposure Task Force,'' by using a faxphone to call (202) 401–0527 and selecting item 6131. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00669. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00669 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00669. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is taking the action of advertising the efforts of the Non-Dietary Exposure Task Force, in the event interested parties would like to become part of the Task Force.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 4, 2000.

Joseph J. Merenda,

Acting Director, Office of Pesticide Programs.

[FR Doc. 00–21920 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–956; FRL–6595–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–956, must be received on or before September 29, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–956 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379; e-mail address: gairola.indira@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–956. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–956 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control

number PF–956. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 15, 2000.

Peter Caulkins, Acting

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

International Specialty Products

6E4728

EPA has received a pesticide petition PP 6E4728 from International Specialty Products, 1361 Alps Road, Wayne, NJ 07470 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for *N* (n-octyl)-2-pyrrolidone (Agsolex 8®) and *N*-(n-dodecyl)-2-pyrrolidone (Agsolex 12®) when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities, or to animals (40 CFR 180.1001(c) and (e)). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Plant metabolism. The Agency does not generally require residue chemistry data or environmental fate data to rule on the exemption from the requirement of a tolerance for an inert ingredient. However, relevant dietary residue modeling as well as extensive environmental fate data has been completed.

B. Toxicological Profile

1. *Acute toxicity*—i. *N-(n-octyl)-2-pyrrolidone*. The acute oral LD_{50} for *N*-(n-octyl)-2-pyrrolidone when tested as sold, was found to be 2.05 grams/kilograms bodyweight (g/kg bwt). Graded dose levels (0.63–5.00 g/kg) of *N*-(n-octyl)-2-pyrrolidone were administered to five groups of fasted Wistar-strain albino rats (5 male, 5 female per group). The animals were observed for pharmacological effects, external signs of toxicity, and mortality over a 14–day period.

ii. *N-(n-dodecyl)-2-pyrrolidone*. The acute oral LD_{50} for *N*-(n-dodecyl)-2-pyrrolidone, when tested as supplied, was found to be greater than 5 g/kg bwt. A single dose level of *N*-(n-dodecyl)-2-pyrrolidone was administered to 10 fasted Wistar-strain albino rats (5 male, 5 female). The animals were observed for external signs of toxicity or pharmacological effects and mortality over a 14–day period.

2. *Primary ocular irritation*—i. *N-(n-octyl)-2-pyrrolidone*. *N*-(n-octyl)-2-pyrrolidone was found to be extremely irritating when tested as sold, with wash procedures reducing the severity of the irritation observed. The 2% aqueous suspension was nonirritating both with and without washout procedures. Nine New Zealand white rabbits each received a single intra-ocular application of 0.1 mL of *N*-(n-octyl)-2-pyrrolidone tested as sold. An additional 9 animals received a single application of a 2% aqueous suspension of *N*-(n-octyl)-2-pyrrolidone. In both assays, the eyes of 6 animals remained unwashed for 24 hours while the eyes of the remaining 3 animals were washed 30 seconds after instillation of the test materials. Observations of ocular irritation were recorded 24, 48, and 72 hours following instillation of test materials. Additional readings were made at 4, 7, 14, and 21 days in the assay where *N*-(n-octyl)-2-pyrrolidone was tested as sold. The eyes were scored for corneal opacity, iritis, conjunctivitis and other effects.

ii. *N-(n-dodecyl)-2-pyrrolidone*. *N*-(n-dodecyl)-2-pyrrolidone when tested as sold was considered moderately irritating to rabbit eyes, with wash procedures reducing both the severity and duration of the irritation observed. The 2% aqueous suspension was nonirritating both with and without washout procedures. Nine New Zealand white rabbits each received a single intraocular application of 0.1 mL of *N*-(n-dodecyl)-2-pyrrolidone tested as sold. An additional 9 animals received a

single application of a 2% aqueous suspension of *N*-(n-dodecyl)-2-pyrrolidone. In both assays, the eyes of 6 animals remained unwashed for 24 hours while the eyes of the remaining 3 animals were washed 30 seconds after instillation of the test materials. Observations for ocular irritation were recorded 24, 48, and 72 hours following instillation of test materials. Additional readings were made at 4, 7, 14, and 21 days in the assay where *N*-(n-dodecyl)-2-pyrrolidone was tested as sold. The eyes were scored for corneal opacity, iritis, conjunctivitis and other effects.

3. *Primary dermal irritation*—i. *N-(n-octyl)-2-pyrrolidone*. *N*-(n-octyl)-2-pyrrolidone was extremely irritating to rabbit skin when tested as sold, and minimally irritating as a 2% suspension. The backs of 6 New Zealand white rabbits were closely clipped and the skin on the right side was abraded by making longitudinal epidermal incisions. The skin on the left side was left intact. A single application of 0.5 mL of *N*-(n-octyl)-2-pyrrolidone, tested as sold, was made to each test site. In a second assay, an additional 6 rabbits received single applications of a 2% aqueous suspension of *N*-(n-octyl)-2-pyrrolidone. In both assays, the wrapping and compound were removed at 24 hours and the sites scored at 24 and 72 hours for erythema and edema using the Draize scale. The mean scores at 24 and 72 hours were averaged to yield a primary irritation index of 7.45 for *N*-(n-octyl)-2-pyrrolidone, when tested as sold, and 0.50 when tested as a 2% gravimetric aqueous suspension.

ii. *N-(n-dodecyl)-2-pyrrolidone*. *N*-(n-dodecyl)-2-pyrrolidone was severely irritating to rabbit skin when tested as sold, and mildly irritating as a 2% suspension. The backs of 6 New Zealand white rabbits were closely clipped and the skin on the right side was abraded by making longitudinal epidermal incisions. The skin on the left side was left intact. A single application of 0.5 mL of *N*-(n-dodecyl)-2-pyrrolidone, tested as sold, was made to each test site. In a second assay, an additional 6 rabbits received single applications of a 2% aqueous suspension of *N*-(n-dodecyl)-2-pyrrolidone. In both assays, the wrapping and compound were removed at 24 hours and the sites scored at 24 and 72 hours for erythema and edema using the Draize scale. The mean scores at 24 and 72 hours were averaged to yield a Primary Irritation Index of 6.5 for *N*-(n-dodecyl)-2-pyrrolidone, when tested as sold, and 1.28 when tested as a 2% gravimetric aqueous suspension.

4. *Acute dermal toxicity*—i. *N-(n-octyl)-2-pyrrolidone*. The acute dermal LD_{50} for *N*-(n-octyl)-2-pyrrolidone when tested undiluted was determined to be greater than 2 g/kg bwt. Six New Zealand white rabbits each received a single dermal application of undiluted N-(n-octyl)-2-pyrrolidone at a dose level of 2 g/kg bwt. The skin of 3 animals was abraded, while the remaining animals skin remained intact. Test sites were occluded for 24 hours at which time the occlusive wrap and any remaining test article were removed. Animals were observed for pharmacologic activity 1, 3, 6, and 24 hours after treatment and daily thereafter for a total of 14 days. A gross necropsy was performed on all animals. The skin at the test sites showed crust formation, scaling and scarring. No gross internal changes were observed in any of the animals.

ii. *N-(n-dodecyl)-2-pyrrolidone*. The acute dermal LD_{50} for *N*-(n-dodecyl)-2-pyrrolidone, when tested undiluted, was determined to be greater than 2 g/kg bwt. Six New Zealand white rabbits each received a single dermal application of *N*-(n-dodecyl)-2-pyrrolidone at a dose level of 2 g/kg bwt. The skin of 3 animals was abraded, while the remaining animals' skin remained intact. Test sites were occluded for 24 hours at which time the wrap and any remaining test article were removed. Animals were observed for pharmacologic activity 1, 3, 6, and 24 hours after treatment and daily thereafter for a total of 14 days. A gross necropsy was performed on all animals. The skin at the test sites was moderately to severely reddened, with crust formation, scarring, and scaling observed. No gross internal changes were observed in 5 of the 6 animals. One female animal died on day 5 of the observation period.

5. *Department of Transportation corrosivity*—i. *N-(n-octyl)-2-pyrrolidone*. *N*-(n-octyl)-2-pyrrolidone when tested as sold, was found to be corrosive to the skin of rabbits under conditions of this test. Six New Zealand white rabbits each received a single dermal application of 0.5 mL of undiluted *N*-(n-octyl)-2-pyrrolidone on 1 intact test site. The test site was occluded for 4 hours at which time the occlusive wrap and any remaining material were removed. Animals were observed for erythema, edema, and other effects at 4, 48, hours, and 7 days after application. Crust formation was observed in 5 of the 6 animals.

ii. *N-(n-dodecyl)-2-pyrrolidone*. *N*-(n-dodecyl)-2-pyrrolidone, when tested undiluted, was found to be corrosive to rabbit skin under the conditions of this test. Six New Zealand white rabbits each received a single dermal application of 0.5 mL *N*-(n-dodecyl)-2-pyrrolidone on 1 intact test site. The test site was occluded for 4 hours at which time the occlusive wrap and any remaining test material were removed. The animals were observed for erythema, edema, and other effects at 4, 48, hours, and 7 days after application. Crust formation was seen in 5 of 6 animals at day 7.

6. *Guinea pig sensitization study*—i. *N-(n-octyl)-2-pyrrolidone*. In the screening test described below, *N*-(n-octyl)-2-pyrrolidone produced evidence of delayed contact hypersensitivity in 2 of the 20 test animals. Twenty female albino guinea pigs received intradermal injections of 0.05% v/v *N*-(n-octyl)-2-pyrrolidone in both water and in Freund's complete adjuvant (FCA) as well as FCA in water alone. One week after the injections, the same interscapular area was covered occlusively for 48 hours with a patch saturated with *N*-(n-octyl)-2-pyrrolidone 30% v/v in distilled water. During this induction phase, 10 control animals were treated similarly with the exception that the test material was omitted from the injections and topical applications. Two weeks after the induction period, both the test and control animals were challenged topically using a patch saturated in 0.2 mL *N*-(n-octyl)-2-pyrrolidone, 10% v/v in distilled water applied to an anterior site on the flank and *N*-(n-octyl)-2-pyrrolidone, 5% v/v in distilled water applied in a similar manner to a posterior site. The patches were sealed to the flank covered for 24 hours. The challenge sites were evaluated at 24, 48, and 72 hours after patch removal.

ii. *N-(n-dodecyl)-2-pyrrolidone*. In the screening test described below, *N*-(n-dodecyl)-2-pyrrolidone produced evidence of delayed contact hypersensitivity. Twenty female albino guinea pigs received intradermal injections of 0.05% v/v *N*-(n-dodecyl)-2-pyrrolidone in both water and in FCA as well as FCA in water alone. One week after the injections, the same interscapular area was covered occlusively for 48 hours with a patch saturated with *N*-(n-dodecyl)-2-pyrrolidone, 2.5% v/v in distilled water. During this induction phase, 10 control animals were similarly treated with the exception that the test material was omitted from the injections and topical applications. Two weeks after the induction period, both the test and control animals were challenged topically using a patch saturated in 0.2 mL *N*-(n-dodecyl)-2-pyrrolidone, 1% v/v in distilled water applied to an anterior site on the flank and *N*-(n-dodecyl)-2-pyrrolidone, 0.5% v/v in distilled water applied in a similar

manner to a posterior site. The patches were sealed to the flank and covered for 24 hours. The challenge sites were evaluated at 24, 48, and 72 hours after patch removal. Evidence of delayed contact sensitivity was produced by *N*-(n-dodecyl)-2-pyrrolidone in 5 animals. An inconclusive response was seen in 2 animals.

7. *Clinical studies*—i. *N-(n-octyl)-2-pyrrolidone*. *N*-(n-octyl)-2-pyrrolidone did not induce contact dermal phototoxic response, contact dermal photoallergy or contact dermal sensitization in human subjects under conditions of the following tests.

ii. *N-(n-dodecyl)-2-pyrrolidone*. *N*-(n-dodecyl)-2-pyrrolidone did not induce contact dermal phototoxic response, contact dermal photoallergy or contact dermal sensitization in human subjects under conditions of the following tests.

8. *Phototoxicity*—i. *N-(n-octyl)-2-pyrrolidone*. Each of 10 human subjects, all females, received 0.2 mL of a 1% suspension of test material in tap water on both volar forearms. Following a 24–hour exposure period under occlusive wrapping, the patches were removed and the sites scored for erythema and edema. Immediately following scoring, 1 arm was irradiated with ultraviolet (UV)-A light. Test sites were scored immediately after irradiation and again at 24 and 48 hours. The nonirradiated arm served as a control. No reactions were exhibited on either the irradiated or nonirradiated sites. *N*-(n-octyl)-2-pyrrolidone did not induce contact dermal phototoxic response in human subjects under conditions of this test.

ii. *N-(n-dodecyl)-2-pyrrolidone*. Each of 10 human subjects, all females, received 0.2 mL of a 1% suspension of test material in tap water on both volar forearms. Following a 24–hour exposure period under occlusive wrapping, the patches were removed and the sites scored for erythema and edema. Immediately following scoring, 1 arm was irradiated with UV-A light. Test sites were scored immediately after irradiation and again at 24 and 48 hours. The nonirradiated arm served as a control. One subject exhibited a faint, minimal reaction to the test material before and after irradiation. *N*-(n-dodecyl)-2-pyrrolidone did not induce contact dermal phototoxic response under conditions of this test.

9. *Photoallergy*—i. *N-(n-octyl)-2-pyrrolidone*. Each of 25 human subjects, 6 males and 19 females, received 0.2 mL of a 1% suspension of test material in tap water on both volar forearms. Following a 24–hour exposure period under occlusive wrapping, the patches were removed and the sites scored for erythema and edema. Immediately after scoring, 1 arm was irradiated with both UV-A and UV-B light. The UV-A exposure period was 15 minutes; the UV-B exposure period was adjusted based on each subject's skin type minimal erythema dose. Sites were scored immediately following irradiation. A series of 6 induction patches was applied twice a week for 3 weeks. Following a 2–week rest period, challenge patches were applied to virgin sites on each forearm. After a 24–hour exposure period, both sites were scored and the previously designated arm was irradiated. The sites were scored immediately after irradiation and again at 24 and 48 hours. During the induction phase, 5 subjects exhibited a faint, minimal reaction on the irradiated contact site and one subject exhibited erythema and/or slight edema on the nonirradiated site. No reactions were exhibited at the challenge phase. *N*-(n-octyl)-2-pyrrolidone did not induce contact dermal photoallergy nor contact dermal sensitization under conditions of this test.

ii. *N-(n-dodecyl)-2-pyrrolidone*. Each of 25 human subjects, 6 males and 19 females, received 0.2 mL of a 1% suspension of test material in tap water on both volar forearms. Following a 24–hour exposure period under occlusive wrapping, the patches were removed and the sites scored for erythema and edema. Immediately after scoring, 1 arm was irradiated with UV-A and UV-B light. The UV-A exposure period was 15 minutes; the UV-B exposure period was adjusted based on each subject's skin type minimal erythema dose. Sites were scored immediately following irradiation. A series of 6 induction patches was applied twice a week for 3 weeks. Following a 2–week rest period, challenge patches were applied to virgin sites on each forearm. After a 24–hour exposure period, both sites were scored and the previously designated arm was irradiated. The sites were scored immediately after irradiation and again 24 and 48 hours. During the induction phase, 9 subjects exhibited a faint, minimal reaction at the irradiated contact site and 4 subjects exhibited a similar reaction at the non-irradiated contact site. No reactions were exhibited at the challenge phase. *N*-(n-dodecyl)-2-pyrrolidone induced neither contact dermal photoallergy nor contact dermal sensitization under conditions described.

10. *Repeated insult patch test*—i. *N-(n-octyl)-2-pyrrolidone*. Each of 100 human subjects, 26 males and 74 females, received 0.2 mL of a 1% suspension of test material in tap water on the left upper back area. Following a 24–hour exposure period under occlusive wrapping, the patches were removed and scored for erythema and edema. A series of 9 induction phases was applied 3 times a week for 3 weeks. Following a 2–week rest period, challenge patches were applied to a virgin site on the right upper back area and allowed to remain in skin contact for 24 hours. Challenge sites were scored for erythema and edema at 24, 48, and 72 hours post-patching. During the induction phase, 61 subjects exhibited slight reactions; several subjects exhibited hyperpigmentation and/or dryness. The induction patch sites exhibited no reactions during the rest period or at the challenge. During the challenge phase, 3 subjects exhibited a faint, minimal reaction at the challenge site. After repeated applications under conditions of this test, *N*-(n-octyl)-2-pyrrolidone did not induce contact dermal sensitization.

ii. *N-(n-dodecyl)-2-pyrrolidone*. Each of 100 human subjects, 26 males and 74 females, received 0.2 mL of a 1% suspension of test material in tap water on the left upper back area. Following a 24–hour exposure period under occlusive wrapping, the patches were removed and scored for erythema and edema. A series of 9 induction patches was applied 3 times a week for 3 weeks. Following a 2–week rest period, challenge patches were applied to a virgin site on the right upper back area and allowed to remain in skin contact for 24 hours. Challenge sites were scored for erythema and edema at 24, 48, and 72 hours post-patching. During the induction phase, 50 subjects exhibited slight reactions, several subjects exhibited hyperpigmentation and/or dryness. The induction patch sites exhibited no reactions during the rest period or at the challenge. During the challenge phase, 12 subjects exhibited faint, minimal reactions at the challenge site, 1 exhibited dryness. After repeated applications under conditions of this test, *N*-(n-dodecyl)-2-pyrrolidone did not induce contact dermal sensitization.

11. *Comodogenicity*—i. *N-(n-octyl)-2-pyrrolidone*. Under conditions of this study, in which a mean comedogenic grade of ≥2.0 in rabbits is considered to indicate potential comedogenesis in humans, *N*-(n-octyl)-2-pyrrolidone is not expected to be comedogenic in humans. The comedogenicity potential of *N*-(n-octyl)-2-pyrrolidone was assessed in New Zealand white rabbits. The external ear canal of 6 animals received dermal application of 0.5 mL of 2% *N*-(n-octyl)-2-pyrrolidone in distilled water, 5 days a week over a 4–week period. Microscopic examination of the treated tissues was then

performed. Minimal to moderate local irritation was noted in all test animals characterized by redness, eschar, dryness, and flaking. A mild to moderate comedogenic response was observed in 4 of the treated rabbits each receiving a comedogenic grade of 1.0 on a scale of 0 to 5. The remaining test animals received a grade of 0 (negative), yielding a mean comedogenic grade of 0.67. There were no neoplastic microscopic findings in this study.

ii. *N-(n-dodecyl)-2-pyrrolidone*. Under conditions of this study, in which a mean comedogenic grade of ≥2.0 in rabbits is considered to indicate potential comedogenesis in humans, *N*-(n-dodecyl)-2-pyrrolidone is not expected to be comedogenic in humans. The comedogenicity potential of *N*-(n-dodecyl)-2-pyrrolidone was assessed in New Zealand white rabbits. The external ear canal of 6 animals received dermal applications of 0.5 mL of 2% *N*-(n-dodecyl)-2-pyrrolidone in distilled water, 5 days a week over a 4–week period. Microscopic examination of the treated tissue was then performed. Minimal to moderate local irritation was noted in all test animals characterized by redness, eschar, dryness, and flaking. A mild to moderate comedogenic response was observed in 1 of the treated rabbits receiving a comedogenic grade of 3 on a scale of 0 to 5. The remaining test animals received a grade of 0 (negative), yielding a mean comedogenic grade of 0.5. There were no neoplastic microscopic findings.

12. *Ames Salmonella/microsome reverse mutation assay*—i. *N-(n-octyl)-2-pyrrolidone*. No mutagenic activity was demonstrated by *N*-(n-octyl)-2-pyrrolidone when tested as sold in the Ames assay. *N*-(n-octyl)-2-pyrrolidone was tested, as sold, in the Ames assay with *Salmonella typhimurium* tester strains TA 1535, TA 1537, TA 1538, TA 98, and TA 100. Tests were conducted in all 5 strains both with and without metabolic activation (induced S–9 rat liver preparation). The entire assay was performed twice.

ii. *N-(n-dodecyl)-2-pyrrolidone*. No mutagenic activity was demonstrated for *N*-(n-dodecyl)-2-pyrrolidone in the Ames *Salmonella*/microsome reverse mutation assay. *N*-(n-dodecyl)-2-pyrrolidone was tested, as sold, in the Ames assay with *Salmonella typhimurium* tester strains TA-1535, TA-1537, TA-1538, TA-98, and TA-100. Tests were conducted in all 5 strains both with and without metabolic activation (induced S–9 rat liver preparation). The results from the initial assay were confirmed in an independent assay.

13. *Mouse micronucleas test*—i. *N-(n-octyl)-2-pyrrolidone*. *N*-(n-octyl)-2-pyrrolidone was found to be non-mutagenic at a dose level of 1,720 mg/kg in this *in vivo* cytogenetic test. Mice were administered *N*-(n-octyl)-2-pyrrolidone by intragastric gavage at a dose level of 1,720 mg/kg, based on results of a preliminary toxicity test. Controls were dosed in the same manner. Bone marrow smears were obtained at 24, 48, and 72 hours post-dosing and examined for the presence of micronuclei in polychromatic and normochromatic erythrocytes. The ratio of polychromatic to normochromatic erythrocytes (P/N ratio) was also assessed. At sampling times mice treated with *N*-(n- octyl)-2-pyrrolidone showed no significant increase in frequency of micronucleated polychromatic erythrocytes, nor was there a significant decrease in P/N ratio at any of the sampling times.

ii. *N-(n-dodecyl)-2-pyrrolidone*. *N*-(n-dodecyl)-2-pyrrolidone was found to be non-mutagenic at a dose level of 5,000 mg/kg in this *in vivo* cytogenetic test. Mice were administered *N*-(n-dodecyl)-2-pyrrolidone by intragastric gavage at a dose level of 5,000 mg/kg, based on results of a preliminary toxicity test. Vehicle controls were dosed with corn oil in the same manner. Bone marrow smears were obtained at 24, 48, and 72 hours post-dosing and examined for the presence of micronuclei in polychromatic and normochromatic erythrocytes. The ratio of polychromatic to normochromatic erythrocytes (P/N ratio) was also assessed. At sampling times, mice treated with *N*-(n-dodecyl)-2-pyrrolidone showed no significant increase in frequency of micronucleated polychromatic erythrocytes. There was, however, a statistically significant decrease in P/N ratio at 24 and 72 hour sampling times which may be indicative of bone marrow cell depression/toxicity.

14. *Mouse lymphoma mutagenesis assay*. The results of this assay indicate that *N*-(n-octyl)-2-pyrrolidone produced a negative response in cultures treated in either the absence of exogenous activation or the presence of Aroclor-induced rat liver S–9 mix. In this assay, *N*-(n-octyl)-2-pyrrolidone was tested for its potential to induce mutations at the thymidine Kinase locus of L5128Y TK+/-mouse lymphoma cells both in the presence and absence of exogenous metabolic activation. Based on the results of a range finding test the test article was tested in the assay at doses ranging 0.005 to 100 uL/mL which produced varying degrees of reduction in cell growth.

15. *Reproductive and developmental toxicity*. *N*-(n-octyl)-2-pyrrolidone was administered orally by gavage, once daily, to pregnant female Wistar rats from day 6 through day 15 post coitum, at dosages of 50, 200, or 800 mg/kg bwt/day in order to assess the effects on embryonic and fetal development. At 800 mg/kg/day, 1 dam died after the 7th and 1 after the 10th test article administration. The females of this group had marked clinical signs of reaction to treatment, reduced food consumption, slight body weight loss during the first day of dosing and reduced corrected body weight gain. The mean fetal body weight was reduced at this dosage, combined with a delay of skeletal ossification. At 50 or 200 mg/kg/day, no effects of treatment with the test article on maternal or fetal parameters were evident. Based on the results of this study, the no observed adverse effect level (NOAEL) for the maternal and fetal parameters was considered to be 200 mg/kg bwt/day. *N*-(n-octyl)-2-pyrrolidone did not reveal any teratogenic potential up to and including the highest dose tested (HDT) level of 800 mg/kg bwt/day when administered to pregnant Wistar rats under the conditions described for this study.

16. *28–Day oral toxicity*—i. *N-(n-octyl)-2-pyrrolidone*. In a 28–day oral toxicity study in rats, the no-effect level of *N*-(n-octyl)-2-pyrrolidone was determined to be 55 mg/kg/day. At 320 mg/kg/day specific changes in general health, body weight gain, hematological and biochemical parameters were recorded. *N*-(n-octyl)-2-pyrrolidone, formulated as a solution in corn oil, was administered to rats (5 males, 5 females per dosage level) by intragastric intubation at dosage levels of 5, 55, or 320 mg/kg/day. Treatment was carried out once daily for 28 consecutive days. Similarly, control animals received corn oil (5 mL/kg/day) included: Statistically significant observations noted at the high dose level of 320 mg/kg day included: Lower body weight gains in females (week 3); lower packed cell volume (PCV) and red blood cell counts in males, corpuscular hemoglobin concentration (MCHC) in males; and higher glutamic-pyruvic transaminase levels in females. In all other respects including food consumption, organ weights, macroscopic and microscopic pathology, no changes were noted that were considered to be treatment-related.

ii. *N-(n-dodecyl)-2-pyrrolidone*. In a 28–day oral toxicity study in rats, the no-effect level of *N*-(n-dodecyl)-2-pyrrolidone was determined to be 100 mg/kg/day. *N*-(n-dodecyl)-2-pyrrolidone, formulated as a solution in corn oil, was administered to rats (5 males, 5 females per dosage level) by

intragastric intubation at dosage levels of 10, 100, or 1,000 mg/kg/day. Treatment was carried out once daily for 28 consecutive days. Similarly, control animals received corn oil (5 mL/kg/day). At 1,000 mg/kg/day specific changes in general health, body weight gains, food consumption, biochemical parameters, organ weights, macroscopic and microscopic pathology were recorded. Statistically significant observations noted at the high dose level of 1,000 mg/kg/day included: Lower food consumption and bodyweight gains in males; higher glutamic-pyruvic transaminase levels in males and females; higher blood urea nitrogen levels in females; and higher adjusted liver weights in females, and minimal centrilobular hepatocyte enlargement in males and females.

17. *90–Day oral toxicity in dogs*. In a 90–day oral toxicity study in dogs, a dose level of 30 mg/kg/day was determined to be the NOAEL. *N*-(n-octyl)-2-pyrrolidone was administered orally via capsule at dosage levels of 30, 90, and 240 mg/kg/day. All animals were observed daily for clinical signs of toxicity. After treatment, all surviving animals were subjected to complete necropsy with histological examination. Dose related neurological signs and body weight loss were observed at 90 and 240 mg/kg/day levels. Also at 90 and 240 mg/kg/day, changes in clinical pathological parameters were observed and were dose-related. In addition, dose-related increases in both absolute and relative liver weights were observed in all groups but was significant in only 90 and 240 mg/kg/day groups. One female death occurred on day 42 in the 240 mg/kg/day group.

18. *90–Day dietary toxicity in rats*. Based on the results of a 90–day feeding study in rats, 600 parts per million (ppm) was considered a NOAEL following dietary administration of *N*-(n-octyl)-2-pyrrolidone for 90 days. *N*-(n-octyl)-2-pyrrolidone was administered orally via diet to rats at dosage levels of 60, 600, and 10,000 ppm. All animals were observed daily for clinical signs of toxicity. After treatment, all surviving animals were subjected to complete necropsy with histological examination. Reduced weight gain, increased absolute and relative liver weights and mild hepatocyte hypertrophy were observed at 10,000 ppm. No treatment-related effects were observed at 60 and 600 ppm.

19. *Endocrine disruption*. *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone are not expected to be endocrine disrupters. They do not share structural similarity with currently known or suspected chemicals or chemical classes being studied for this effect.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Residue data are generally not required for inert ingredient exemptions from a tolerance. International Specialty Products has exposure data on 4 representative crops to support the listing of *N*-(n-octyl)-2-pyrroidone and *N*-(n-dodecyl)-2-pyrrolidone as an inert ingredient exempted from the requirements of a tolerance when used in accordance with good agricultural practices at levels not to exceed 1% in the final solution for preharvest and postharvest application, and application to animals. A dietary residue exposure system (DRES) analysis was run using a model based on Kenaga and Hoerger's ''Maximum Expected Residues on Vegetation.'' The four representative crops chosen for the analysis were: Wheat, lettuce, apples, and sugar beets. The reference dose used by EPA, was derived from the NOAEL obtained from an animal study in dogs, the most sensitive species in chronic studies with these materials. For *N*-(n-octyl)-2-pyrrolidone the NOAEL was 30 mg/kg bwt/day in the 90–day dog study. A 250–fold safety factor results in a reference dose of 0.12 mg/kg bwt/day. This reference dose (RfD) can then be compared to the dietary exposure yielding a ''percent of dose utilized'' estimate. An application rate of 0.25 lb (113 grams) *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone/acre of crop was used for the analysis. Apples, under the category of ''fruit-cherries, peaches'' results in an estimated residue of 1.75 ppm. Lettuce (head and leaf), under the category ''leaves and leafy crops'' results in an estimated residue of 31 ppm. Wheat, under the category of ''forage-alfalfa, clover'' results in an estimated residue of 14 ppm. Sugar beets (root crop) is not estimated in the model, but a default value of 5 ppm is assumed. This is a conservative estimate given that the pesticide formulation does not physically touch the crop.

Using these input parameters, a residue file was assembled which lists the chronic reference dose and all of the relevant commodities that are included in the consumption data base. The exposure analysis shows that, for the U.S. population (general population, 48 contiguous states, all seasons), the listed crops utilize only 25% of the reference dose. This analysis shows there is a substantial margin of safety for the use of *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone on these crops at 0.25 lb/acre.

ii. *Drinking water*. Based on its very low application rate, as well as the environmental fate studies, *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone would not be expected to persist in the environment, nor contaminate drinking water supplies.

2. *Non-dietary exposure*. *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone are used in household and institutional cleaners, specifically hard-surface cleaners. Annual volumes to this market segment approach 150,000 pounds each.

D. Cumulative Effects

There are no cumulative effects expected since *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone rapidly degrade and the very low use rate is not conducive to build-up in the environment.

E. Safety Determination

1. *U.S. population*. As per the details in the dietary residue exposure system analysis, even the most sensitive population, children, 1 to 6 years old, still would be expected to consume slightly more than 1% of the RfD, for the 4 representative crops analyzed.

2. *Infants and children*. No developmental, embryotoxic, or teratogenic effects have been associated with *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone.

F. International Tolerances

The applicant is not aware of any international tolerance or CODEX of maximum residue limits (MRLs) for *N*-(n-octyl)-2-pyrrolidone and *N*-(n-dodecyl)-2-pyrrolidone on any crop or livestock commodities.

[FR Doc. 00–22013 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–960; FRL–6737–4]

Notice of Filing Pesticide Petitions to Establish Exemptions from the Requirement of Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–960, must be

received on or before September 27, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–960 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: For MinerALL, contact Andrew C. Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6928; e-mail address: bryceland.andrew@epa.gov.

For section II Platte Chemical Company, Inc., 2, 6-diisopropylnapthalene (2, 6-DIPN), contact Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; e-mail address: benmhend.driss@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–960. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–960 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp–docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–960. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests., Reporting and recordkeeping requirements.

Dated:August 21, 2000.

Kathleen Knox, Acting

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

I. Ironwood Clay Company

PP–0F6148

EPA has received a pesticide petition (PP–0F6148) from Ironwood Clay Company, Inc., c/o Plant Sciences Inc., 342 Green Valley Road, Watsonville, CA 95076–1305, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide Oceanic Clay. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, [Ironwood Clay Company] has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by [Ironwood Clay Company] and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Oceanic Clay (tradename: MinerALL) is proposed for use as a crop protectant and growth stimulant on agricultural crops. For growing plants, MinerALL works as a crop protectant by forming a barrier on the plant surface. The barrier protects the plant from insects, heat, and stress, as well as creates an inhospitable environment for plant diseases such as powdery mildew, *Botrytis*, and *Fusarium*. The minerals, trace and rare earth elements in MinerALL provide nutrients to plants and beneficial microorganisms. Overall, Oceanic Clay can be classified as having a non-toxic mode of action.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues*. Oceanic Clay is a naturally-occurring, pure clay complex composed of minerals, ions, and elements, including trace and rare earth elements.

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. Residues of Oceanic Clay are not expected at the time of harvest, and as such, an analytical method for residues is not applicable.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed*. An analytical method for residues is not applicable. Oceanic Clay is applied to growing crops that are washed as part of the postharvest and packaging process. As products containing Oceanic Clay leave a visible white film on treated surfaces, for cosmetic reasons treated produce would be washed before reaching the marketplace. Residues of Oceanic Clay are not expected on raw agricultural commodities (RAC) and there are no known toxicological effects related to dietary exposure to Oceanic Clay.

C. Mammalian Toxicological Profile

Oceanic Clay has been evaluated for acute toxicity through the oral, inhalation, dermal, and ocular routes of exposure. The results of the studies have all indicated toxicity category IV, which poses no significant human health risks.

The acute oral toxicity of Oceanic Clay in rats is greater than 5,000 milligrams per kilograms (mg/kg) (toxicity category IV), and no toxicity or clinical abnormalities were observed throughout the study period. Acute inhalation in rats is greater than 2.47 mg/L (toxicity category IV), and no toxicity or clinical abnormalities were observed in test animals throughout the study. Eye irritation in rabbits was not observed at a dose of 0.1 mL (toxicity category IV), and no toxicity or clinical abnormalities were observed throughout the study period. Skin irritation in rabbits was not observed at a dose of 0.5 mL (toxicity category IV), and no toxicity or clinical abnormalities were observed throughout the study period. No dermal sensitization was observed in guinea pigs (toxicity category IV), and no toxicity or clinical abnormalities were observed throughout the study period. In addition, clinical studies have been conducted for evaluating safety of cosmetic use of the ingredient, primarily in facial products. In a dermal patch test of 35 participants, the ingredient was rated slightly irritating and non-allergenic. In a facial application test of 40 participants, no irritation was observed. No incidents of hypersensitivity have been reported by researchers, manufacturers or users.

A waiver is being requested for acute dermal toxicity and genotoxicity data requirements, based on the fact that the active ingredient is known to be non-toxic and non-irritating to mammals. The ingredient is available commercially as a facial/cosmetic product for dermal application and it has been evaluated for dermal effects through various studies including clinical trials. Oceanic Clay is not related to any known mutagen and does not belong to a chemical class of compounds containing known mutagens. Finally, the ingredient has never been reported as causing any type of adverse effect to humans, in published literature or through commercial use.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Dietary exposure from use of Oceanic Clay, as proposed, would be expected to be minimal. Oceanic Clay is applied to growing crops that are washed as part of the postharvest and packaging process. As products containing Oceanic Clay leave a visible white film on treated surfaces, for cosmetic reasons treated produce would be washed before reaching the marketplace. Residues of Oceanic Clay are not expected on RAC and there are no known toxicological

effects related to dietary exposure to Oceanic Clay.

ii. *Drinking water*. Exposure to humans from residues of Oceanic Clay in consumed drinking water would be unlikely and there are no known toxicological effects related to exposure to Oceanic Clay.

2. *Non-dietary exposure*. The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are commercial, agricultural and horticultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Person protective equipment (PPE) mitigates the potential for exposure to applicators and handlers of the proposed products, when used in commercial, agricultural and horticultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, Oceanic Clay would result in residues that would remain in human food items. Oceanic Clay has a non-toxic mode of action and therefore has no common mechanism of toxicity with other substances.

F. Safety Determination

1. *U.S. population*. There have been no reports of toxins or secondary metabolites associated with Oceanic Clay, and acute toxicity studies have shown that Oceanic Clay is non-toxic, non-irritating and non-sensitizing when applied to test animals. Residues of Oceanic Clay are not expected on agricultural commodities, and there are no known toxicological effects related to exposure to Oceanic Clay.

2. *Infants and children*. As mentioned above, residues of Oceanic Clay are not expected on agricultural commodities, and there are no known toxicological effects related to dietary exposure to Oceanic Clay. There is a reasonable certainty of no harm for infants and children from exposure to Oceanic Clay from the proposed uses.

G. Effects on the Immune and Endocrine Systems

Oceanic Clay is a naturally-occurring clay. To date there is no evidence to suggest that Oceanic Clay functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no U.S. EPA Tolerance.

I. International Tolerances

A Codex Alimentarium Commission maximum residue level (MRL) is not required for Oceanic Clay.

II. Platte Chemical Company, Inc.

PP–8G5008

EPA has received a pesticide petition (PP–8G05008) from Platte Chemical Company, Inc., 419, 18th Street, P.O. Box 1286, Greely, CO 80632 proposing, pursuant to section 408(d) of the (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish temporary exemption from the requirement of a tolerance for the biochemical pesticide 2, 6–diisopropylnapthalene (2,6–DIPN).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Platte Chemical Company, Inc., has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Platte Chemical Company, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

In the **Federal Register** of September 22, 1999 (64 FR 51245) (FRL–6381–7), EPA issued a rule pursuant to section 408 of the (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) establishing a temporary exemption from the requirement of a tolerance for residues of 2,6–DIPN. The temporary exemption from the requirement of a tolerance will expire on September 22, 2000. This request for temporary exemption from the requirement of a tolerance is associated with an experimental use permit (EUP No. 34704 EUP–13). 2,6–DIPN is a potato sprout inhibitor and the purpose of the experimental program is to test the efficacy of the active ingredient.

A. Product Name and Proposed Use Practices

The end use product, Amplify® sprout inhibitor, contains 99.7% 2,6–DIPN. The experimental program will be conducted in potato storage facilities located in Idaho, Maine, Minnesota, North Dakota, Oregon, South Dakota, Washington, and Wisconsin. According to the National Agricultural Statistics Service, approximately 359 cut weight (cwt; 1 cwt equals approximately 100 pounds) of potatoes are grown per acre in the United States. The EUP program will utilize 2,500 pounds of active ingredient on approximately 150 million pounds of stored potatoes during 2000 and 2001. This represents approximately 4,180 acres of potatoes. 2,6–DIPN is a plant growth regulator that is applied as an aerosol at the rate of one pound active ingredient per 600 cwt of potatoes, to achieve a rate of 16.6 parts per million (ppm). Only one application may be made while the potatoes are held in storage.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues*. EPA has classified 2,6–DIPN as a biochemical pesticide (June 5, 1995, EPA letter from William Schneider to Fred Betz). The formulated end product, Amplify® sprout inhibitor, contains 99.7% 2,6–DIPN as the active ingredient. In order to determine the magnitude of 2,6–DIPN residues, Platte conducted studies in/on potatoes and the effect of processing (i.e., washing and cooking) on 2,6–DIPN residues. According to the 2,6–DIPN label, one application of 16.6 ppm should be applied.

2. *Magnitude of residue*—at the time of harvest and the method used to determine the residue. a. *2,6–DIPN magnitude of residues in/on potatoes postharvest storage*. Platte conducted studies to determine 2,6–DIPN residues in whole potatoes and peels at various times, up to 180 days, following 1 to 3 treatments at the maximum application rate. A gas chromatography method was used to measure residues of 2,6–DIPN. Under the EUP, potatoes can only be treated once with Amplify®. Treated potatoes must be held for a minimum of 30 days before being released for processing. Potatoes were treated using a small chamber system that reproduced a commercial operation, but on a small scale. Use of the small chamber system produces realistic but worst-case residue values compared to a full-scale commercial operation characterized by use conditions and practices that would tend to reduce residues to a greater extent than the chamber system. When treated once during storage at a rate of 1.2 pounds active ingredient per 600 cwt. of potatoes, and sampled 30 days after treatment (DAT), residues for whole potatoes were 0.22 ppm, 0.28 ppm, and 0.41 ppm. Under these same conditions, residues in/on the peel were 1.01 ppm, 2.59 ppm, and 2.77 ppm.

b. *2,6–DIPN magnitude of residues in/on processing potatoes*. A magnitude of the residue study was conducted to determine the effect of processing (i.e., baking, boiling, and frying) on whole red and Russet potatoes. Potatoes were treated with a thermal fog of 2,6–DIPN,

in accordance with standard agronomic practices. Two application scenarios were studied: one 20 ppm active ingredient application and 3 applications of 20 ppm active ingredient, totaling 60 ppm active ingredient. A liquid chromatography method was used to analyze residues of 2,6–DIPN in/on the potatoes.

2,6–DIPN residues for whole potatoes were as follows: Whole potatoes treated once (20 ppm) at 0 DAT had residues of 0.17 ppm, 0.26 ppm, 0.27 ppm, 0.15 ppm, 0.21 ppm, and 0.14 ppm. Potatoes treated once (20 ppm) at 3 DAT had residues of 0.14 ppm, 0.08 ppm, 0.18 ppm, 0.09 ppm, 0.25 ppm, and 0.14 ppm. Potatoes treated 3 times (60 ppm) at 0 DAT had residues of 0.97 ppm, 1.14 ppm, 0.59 ppm, 1.70 ppm, 2.10 ppm, and 1.44 ppm. Potatoes treated 3 times (60 ppm) at 3 DAT had residues of 0.58 ppm, 0.72 ppm, 0.75 ppm, 1.13 ppm, 0.57 ppm, and 0.48 ppm.

For whole potatoes baked in aluminum foil, 2,6–DIPN residues were as follows: Potatoes treated once (20 ppm) had residues of 0.08 ppm, and <0.02 ppm. Potatoes treated 3 times (60 ppm) had residues of 0.50 ppm, 0.07 ppm, and 0.24 ppm.

For whole potatoes baked without aluminum foil, 2,6–DIPN residues were as follows: Potatoes treated once (20 ppm) had residues of 0.32 ppm, 0.26 ppm, and 0.13 ppm. Potatoes treated 3 times (60 ppm) had residues of 0.73 ppm, <0.02 ppm, and 0.46 ppm.

For French fried potatoes, 2,6–DIPN residues were as follows: Potatoes treated once (20 ppm) had residues of 0.07 ppm, 0.04 ppm, and 0.03 ppm. Potatoes treated 3 times (60 ppm) had residues of 0.11 ppm, 0.06 ppm, and 0.11 ppm.

c. *2,6–DIPN determination of residues in/on whole potatoes and potato fractions (flesh and peel).* A study was conducted to determine the residues in/on whole potatoes and the potato fractions (flesh and peel). A liquid chromatography method was used to analyze residues of 2,6–DIPN.

2, 6–DIPN residues for whole potatoes were as follows: Whole potatoes treated once (20 ppm) at 0 DAT had residues of 0.12 ppm, 0.16 ppm, and 0.11 ppm. Potato peels treated once (20 ppm) at 0 DAT had residues of 1.76 ppm, 1.56 ppm, and 1.46 ppm. Potato flesh samples treated once (20 ppm) at 0 DAT had no detectable residues above the limit of quantification (LOQ) of 0.02 ppm. Peeled potato samples from 0, 30, and 90 DAT were analyzed for residues; however, no residues above the LOQ of 0.02 ppm were detected.

Residue levels in whole potatoes that have been treated with 2,6–DIPN at the proposed application rate range from 0.22 ppm to 0.41 ppm at 30 DAT. The average residue value is 0.30 ppm. As stated earlier, the small chamber system used to treat potatoes in this study represents a worst-case scenario.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Residues are expected to decline from the time potatoes are removed from storage to the time of consumption. In addition, processing studies demonstrate that washing and cooking substantially reduce residues. Results from peeling studies show that quantifiable residues are not expected in the potato flesh. Because of the relatively low residues observed and the impact of processing, dietary exposure to 2,6–DIPN is expected to be minimal.

C. Mammalian Toxicological Profile

1. *Acute toxicity.* Technical 2,6–DIPN exhibits low acute toxicity. It is a toxicity category III (based on eye irritation) biopesticide. The rat oral LD_{50} is greater than 5,000 mg/kg (toxicity category IV), the rabbit dermal LD_{50} is greater than 5,000 mg/kg (toxicity category IV), and the rat inhalation LD_{50} is greater than 2.60 mg/L (toxicity category IV) at the maximum attainable condition. In addition, 2,6–DIPN is not a skin sensitizer in guinea pigs, shows no dermal irritation at 72 hours in rabbits (toxicity category IV), and shows minimal ocular irritation (toxicity category III) in rabbits. The end use formulation is the same as the technical formulation, it contains no intentionally added inert ingredients.

2. *Genotoxicity.* Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vivo*/*in vitro* unscheduled DNA synthesis in rat primary hepatocyte cultures at 2 time points, and an *in vivo* mouse micronucleus assay have been conducted for 2,6–DIPN. These studies show a lack of genotoxicity for 2,6–DIPN.

3. *90–Day subchronic toxicity study in rats.* 2,6–DIPN was administered in the diet to rats (10 animals/sex/group) at doses of 0, 750, 1,500, or 3,000 ppm (or approximately 0, 37.5, 75, and 150 mg/kg/day for 14 weeks. The no-observed adverse effect level (NOAEL) for this study is 1,500 ppm (75 mg/kg/day) in male and female rats was based on hepatocytic hypertrophy in the liver, tubular nephrosis in the kidney, and cortical cell atrophy in the adrenal gland at 3,000 ppm. A conservative NOAEL is 750 ppm (37.5 mg/kg/day) based on pupil constriction, minimal clinical pathology changes, and changes in organ weights (with no correlating histopathology findings) at 1,500 ppm.

4. *Developmental toxicity in rats.* 2,6–DIPN was administered to pregnant rats at doses of 0, 50, 150, and 500 mg/kg/day from days 6–19 of gestation. The maternal toxicity NOAEL was 50 mg/kg/day based on decreased body weight (bwt) and feed consumption. The NOAEL for prenatal development toxicity was considered to be 150 mg/kg/day based on decreased fetal body weight. There is no evidence of teratogenicity or of increased fetal susceptibility to 2,6–DIPN.

5. *Metabolism.* The metabolism of 2,6–DIPN and di-isopropylnapthalenes have been investigated, and several references to this work have been found in the published literature. In one study, rats were given a single dose or a daily oral dose for 1 month. Tissues were evaluated from animals sacrificed at 0, 2, 4, 24, and 48 hours following the single dose, and 2, 4, and 24 hours, and 7 and 30 days following the repeated dose administration. DIPNs were found predominantly in body fat and subcutaneous fat 2 hours after the dose, with amounts increasing at 24 hours after the dose, and only slightly dropping at 48 hours.

Significant distribution of DIPNs to liver, heart, kidney, and brain was seen at 2 hours; material in these compartments was eliminated by 48 hours following the single dose. Following repeated doses, the amount of DIPNs distributed in tissues 2 hours after the last dose was lower than or equivalent to that seen following a single dose. The amount in body and subcutaneous fat 2 hours following the last dose, although approximately 2–fold higher than that seen following a single dose, diminished markedly by 30 days post-exposure. The half-life in fat was approximately 7 days. Thus, DIPNs showed a relatively low potential for persistent bioaccumulation.

Another study investigated the urinary metabolites of 2,6–DIPN following a single oral dose. Approximately 23% of the dose was excreted in the urine by 24 hours post-dosing.

Other tests. Naphthalene is associated with pulmonary necrosis (following intraperitoneal administration) and carcinogenesis in mice. A study has been reported in the public literature that compared the potential of napthalene, 2-methylnapthalene, 2-isopropylnaphthalene, and 2,6–DIPN to produce pulmonary damage in mice. The study's data suggest that 2,6–DIPN is very unlikely to share the pulmonary toxicity characteristic of napthalene.

No data have been found in the literature that would indicate 2,6–DIPN has any adverse effect on mammals. No incidents of hypersensitivity or any other adverse effects have been observed in individuals handling the material over the past 8 years.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Potential dietary exposure resulting from applications made under an experimental use permit (EUP) would be through the consumption of potato products and animal products from livestock-fed potato feed items. The registrant has made arrangements with processors of 2,6–DIPN-treated potatoes to prohibit feeding treated culls and potato waste to livestock. Thus, potential dietary exposure would result from consumption of treated potatoes only.

2,6–DIPN is not approved for use on any food other than potatoes that are associated with Platte's EUP. Thus, there will be no exposure of 2,6–DIPN from food other than treated potatoes.

a. *Acute dietary exposure*. Exposure to chemicals that have the potential to elicit a toxic response after a relatively short period of exposure (acute toxicant) is calculated using a distribution of exposure estimated from the entire consumption database. The exposure algorithm uses the basic relationship, that exposure is the product of the amount of food consumed and the magnitude of the residue in/on that food. Residues that are observed in/on crops are found to occur as a distribution. Likewise, food consumption patterns are best described by a consumption distribution. The most realistic calculation of acute dietary exposure, therefore, is to multiply the distribution of residues and the distribution of consumption.

For the acute analysis presented here, the Monte Carlo approach was used to estimate dietary exposure from potential residues of 2,6–DIPN in all potatoes. In the Monte Carlo model, the distribution of the residue data (0.22 ppm to 0.41 ppm) was used in conjunction with individual consumption data for each food. The residue distribution was multiplied by the processing factors (PF) determined from 2,6–DIPN processing studies on baked (PF=0.54), boiled (PF=0.33), fried (PF=0.17), and peeled potatoes (PF=0.15). In addition, it was assumed that 100% of the potatoes consumed would be treated with 2,6–DIPN at the proposed label use rate. That is, no adjustments were made for the percentage of all potatoes that would be stored and treated with 2,6–DIPN.

The acute exposure estimate at the 99.9th percentile of exposure for the overall U.S. population was 0.001770 mg/kg bwt/day. When compared to a maternal toxicity NOAEL of 50 mg/kg bwt/day from a developmental toxicity study in rats, the margin of exposure (MOE) at the 99.9th percentile of exposure is 28,246. For women of child-bearing age, the acute exposure estimate at the 99.9th percentile of exposure was 0.001070 mg/kg bwt/day (MOE=46,730). The population subgroup with the highest predicted level of acute exposure was children 1 to 6 years of age. Acute exposure for children 1 to 6 years of age was 0.003318 mg/kg bwt/day (MOE=15,070). Because the predicted exposures, expressed as MOEs, are well above 100, there is reasonable certainty that no acute effects would result from dietary exposure to 2,6–DIPN.

b. *Chronic dietary exposure*. Chronic exposure estimates were calculated for potential residues of 2,6–DIPN in/on all potatoes, including those destined for processing (e.g., frozen, canned). Generally, exposure to chemicals that have the potential to elicit a toxic response after an extended period of exposure (chronic toxicant) is calculated using per-capita mean consumption estimates and an average residue value. As a conservative estimate of potential long-term dietary exposure, it was assumed that 100% of the potatoes consumed would contain 2,6–DIPN residues at 0.30 ppm (average residue). This residue value was multiplied by the processing factors (PF) determined from 2,6–DIPN processing studies on baked (PF=0.54), boiled (PF=0.33), fried (PF=0.17), and peeled potatoes (PF=0.15). Because of its status as a biopesticide, chronic toxicity studies would not normally be required for 2,6–DIPN; however, exposures were compared to a reference dose (RfD) of 0.0375 mg/kg bw/day based on a conservative NOAEL from a subchronic study and an uncertainty factor of 1,000. An additional 10–fold factor was incorporated because of the absence of a chronic toxicity study.

For the overall U.S. population, chronic exposure was estimated to be 0.000095 mg/kg bwt/day or 0.3% of the RfD. Chronic exposure also was calculated for women of child-bearing age. The exposure estimate was 0.000089 mg/kg bwt/day (0.2% of the RfD). For the most highly exposed population subgroup, children 1 to 6 years of age, chronic exposure was estimated to be 0.000175 mg/kg bwt/day or 0.5% of the RfD.

ii. *Drinking water*. There is no established maximum concentration level for 2,6–DIPN in water. Based on the low use rate and an indoor use pattern that is not widespread, residues of 2,6–DIPN in drinking water and exposure from this route is unlikely.

2. *Non-dietary exposure*. 2,6–DIPN is not registered for any use that could result in non-occupational, non-dietary exposure to the general population.

E. Cumulative Exposure

There is no evidence to indicate or suggest that 2,6–DIPN has any toxic effects on mammals that would be cumulative with those of any other chemicals. For the purposes of this exemption from tolerance, therefore, Platte assumes that 2,6–DIPN does not have a common mechanism of toxicity with other substances.

F. Safety Determination

A dietary exposure assessment for 2,6–DIPN was conducted using Novigen Sciences' dietary exposure evaluation model (DEEM^{tm}). Versions 6.73 (Acute Module) and 6.74 (Chronic Module). Dietary exposure to 2,6–DIPN was only based upon potatoes, including fresh potatoes. However, the Amplify® label restricts application of the product to potatoes used only for processing. Therefore, the following is an extremely conservative assessment of the dietary exposure.

1. *U.S. population*. The acute exposure estimate at the 99.9th percentile of exposure for the overall U.S. population was 0.001770 mg/kg bwt/day. When compared to a maternal toxicity NOAEL of 50 mg/kg bwt/day from a developmental toxicity study in rats, the MOE at the 99.9th percentile of exposure is 28,246. For women of child-bearing age, the acute exposure estimate at the 99.9th percentile of exposure was 0.001070 mg/kg bwt/day (MOE = 46730). For the overall U.S. population, chronic exposure was estimated to be 0.000095 mg/kg bwt/day or 0.3% of the RfD. Chronic exposure also was calculated for women of child-bearing age. The exposure estimate was 0.000089 mg/kg bwt/day (0.2% of the RfD) for women of child-bearing age.

2. *Infants and children*. Acute exposure for infants and children 1 to 6 years of age were 0.002794 mg/kg bwt/day (MOE = 17,898) and 0.003318 mg/kg bwt/day (MOE = 15,070), respectively. For the most highly exposed population subgroup, children 1 to 6 years of age, chronic exposure was estimated to be 0.000175 mg/kg bwt/day or 0.5% of the RfD. Chronic exposure also was calculated for infants. The exposure estimate was 0.000107 mg/kg bwt/day (0.3 percnt of the RfD) for infants.

G. Effects on the Immune and Endocrine Systems

Platte has no information to suggest that 2,6–DIPN will adversely affect the immune or endocrine systems. The Agency is not requiring information on endocrine effects of this biochemical pesticide at this time.

H. Existing Tolerances/International Tolerances

No Codex maximum residue levels (MRLs) are established for residues of 2,6–DIPN in/on any food or feed crop.

[FR Doc 00–22166 Filed 8–29–00; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–967; FRL–6739–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–967, must be received on or before September 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–967 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–967. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–967 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–967. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 21, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

9F05044, 9E06005, and 9E06057

EPA has received a pesticide petition 9F05044 from Novartis Crop Protection, 410 Swing Rd., Greensboro, NC 27419, proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of CGA–329351: (*R*)-2-[(2,6-dimethylphenyl) methoxyacetylamino] propionic acid methyl ester (also known as mefenoxam) in or on the food commodity rape seed (i.e., canola) at 0.05 parts per million (ppm). A Notice of Filing for Pesticide Petition 9F05044 was previously published in the **Federal Register** July 21, 2000 (65 FR 45375–45378) (FRL– 6593–5). This current Notice combines several petitions for the same pesticide, mefenoxam. In addition to PP 9F05044, EPA has also received a pesticide petition PP 9E06005 from Interregional Research Project (IR-4) Project Technology Centre of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of CGA–329351: (*R*)-2-[(2,6-dimethylphenyl) methoxyacetylamino] propionic acid methyl ester in or on the food commodities herbs subgroup, fresh at 5.0 ppm; herbs subgroup, dried at 30 ppm; and fresh mint at 5.0 ppm. A second pesticide petition 9E06057 was received from IR–4 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of CGA–329351: (*R*)-2-[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester in or on the food commodities kiwifruit at 0.05 ppm; atemoya, globe artichoke, starfruit, sugar apple, sweetsop, and true custard apple at 0.1 ppm; papaya, black sapote, caimito, canistel, mamey sapote, mango, and sapodilla at 0.3 ppm; and lingonberry at 1.0 ppm. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. Novartis believes the studies supporting these CGA–329351 petitions well characterize metabolism in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for combined residues of CGA–329351 and its metabolites, which contain the 2,6-dimethylaniline (DMA) moiety.

2. *Analytical method*. Novartis has submitted a practical analytical method involving extraction, filtration, acid reflux, steam distillation, and solid phase cleanup with analysis by confirmatory gas chromatography using Nitrogen/Phosphorous (N/P) detection. A total residue method is used for determination of the combined residues of CGA–329351 and its metabolites which contain the 2,6-dimethylaniline (DMA) moiety. The limit of quantitation (LOQ) for the method is 0.05 ppm.

3. *Magnitude of residues in plants*. The canola petition is supported by six field residue trials that were analyzed in concordance with the OPPTS guidelines based on expected reduced residues and environmental benefits of see applications. The six trials accounting for approximately 84% of commercial U.S. canola production (Agricultural Statistics, 1991), were conducted in Georgia (2%), Minnesota (16%), North Dakota (53%), South Dakota (2%), Idaho (6%), and Washington (5%). No residues (<0.05 ppm) of CGA–329351 were detected as 2,6-DMA in canola seed at either the 1x or 3x treatment rate. The IR-4 petitions are supported by 17 trials conducted in California and Florida.

4. *Magnitude of residue in animals.* As there were no detectable residues found with a 1x or 3x treatment regime, there is no expected impact on the dietary intake of livestock in association with this petition. Existing tolerances in 40 CFR part 180 are adequate to support the approval of this requested tolerance in the opinion of Novartis Crop Protection.

B. Toxicological Profile

1. *Acute toxicity*. The toxicological endpoints for CGA–329351 are discussed in Unit 4.B. of the **Federal Register** notice of July 25, 1997 (62 FR 40084) (FRL– 5726–4. The acute toxicity profile can be summarized as follows:

Rat acute oral study with a LD_{50} value of 490 mg/kg. Rat acute dermal study with a LD_{50} > 2,000 mg/kg. Rat inhalation study with a LC_{50} > 2.29 mg/liter (mL) air. Primary eye irritation

study in rabbit showing CGA–329351 as severely irritating. Primary dermal irritation study in rabbit showing CGA–329351 as slightly irritating. Skin sensitization studies in guinea pigs (Maximization and Buehler Test) showing CGA–329351 is not a sensitizer.

2. *Genotoxicty*. The toxicological endpoints for CGA–329351 are discussed in Unit 4.B. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The genotoxicity profile can be summarized as follows:

In vitro gene mutation test: Ames test - negative. *In vitro* chromosomal aberration test: Chinese hamster ovary - negative. *In vitro* gene mutation tests: Ames tests (3 independent studies) -negative; gene mutation in mouse lymphoma cells - negative; reverse mutation in Saccharomyces cerevisiae - negative. *In vitro* chromosomal aberration tests: Chinese hamster bone marrow cytogenetic test - negative. DNA repair study in rat hepatocytes - negative.

3. *Reproductive and developmental toxicity*. The toxicological endpoints for CGA–329351 are discussed in Unit 4.B. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The reproductive and developmental toxicity profile can be summarized as follows:

Teratology study in rats with a maternal no observed adverse effect level (NOAEL) of 10 milligrams/kilogram (mg/kg) based on reduced body weight gain. The fetuses remained entirely unaffected at the highest dose tested, (HDT) 250 mg/kg. Teratology study in rabbits with a maternal NOAEL of 150 mg/kg based on body weight loss. The developmental NOAEL was greater than or equal to the HDT, 300 mg/kg. 3–generation reproduction study in rats with a NOAEL of 1250 ppm, which was the HDT. The treatment had no effect on reproduction or fertility. Dominant lethal study in mouse - negative.

4. *Subchronic toxicity*. The toxicological endpoints for CGA–329351 are discussed in Unit 4.B. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The subchronic toxicity profile can be summarized as follows:

A 28-days cumulative toxicity study in rats with a NOAEL of 50 mg/kg based on liver changes. A 90–day subchronic dietary toxicity study in rats with a NOAEL of 250 ppm based on liver changes. A 90–day subchronic dietary toxicity study in dogs with a NOAEL of 250 ppm based on changes in blood biochemistry and hematology indicative of functional liver changes. A 21–day dermal toxicity study in rats with a NOAEL equal to or higher than the limit dose of 1,000 mg/kg. No local or systemic signs of toxicity were found. A 6–month dietary toxicity study in dogs with a NOAEL of 250 ppm based on changes in blood biochemistry indicative of hepatocellular damage.

5. *Chronic toxicity*. The toxicological endpoints for CGA–329351 are discussed in Unit 4.B. of the **Federal Register** notice of July 25, 1997 (62 FR 40084). The chronic toxicity profile can be summarized as follows:

A 24–month combined chronic toxicity/carcinogenicity study conducted in rats with a NOAEL of 250 ppm based on liver changes. No evidence of oncogenicity was seen. A 24–month oncogenicity study conducted in mice with a NOAEL of 250 ppm based on liver changes. No evidence of oncogenicity was seen.

6. *Animal metabolism*. The rat and goat rapidly metabolize and excrete via the same metabolic pathways as plants. Urinary metabolites are polar, primarily gucuronide and other conjugates. The parent compound is not retained in animal tissues nor secreted in milk.

7. *Metabolite toxicology*. Metabolites are considered to be of equal or less toxicity than the parent material.

8. *Endocrine disruption*. CGA–329351 does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Furthermore, supporting developmental toxicity studies in rats and rabbits, and a reproduction study in rats gave no indication of any effects on endocrine function related to development and reproduction. Subchronic and chronic treatment did not induce any morphological changes in endocrine organs and tissues.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerance, Novartis Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed (i.e., pesticide petitions 9F05044, 9E06005, and 9E06057).

ii. *Chronic exposure*. Under the conservative exposure assumption of residue levels being at tolerance level, less than 15% of the reference dose (RfD) will be utilized by the U.S. general population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data supporting these petitions, Novartis Crop Protection believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues arising from this requested use, including anticipated dietary exposure and all other types of non–occupational exposures. From toxicity studies supporting the registration of CGA–329351, the active ingredient is classified as a Group ''E'' compound (evidence of noncarcinogenicity for humans). There was no evidence of carcinogenicity in a 24–month feeding trial in mice nor in a 24–month feeding study in rats at the dosage levels tested. The doses tested were adequate for identifying a cancer risk.

iii. *Acute exposure*. The risk from acute dietary exposure to CGA–329351 is considered to be very low. The NOAEL in a 28-day study was 50 mg/kg, which is 6-fold higher than the chronic NOAEL. Since chronic exposure assessment did not result in any unacceptable exposure for even the most impacted population subgroup, it is anticipated that also the acute exposure will be in an acceptable range. Calculations show that with the most exposed group (non–nursing infants) only 26% of the acute RfD will be utilized; the requested tolerance for rape seed (i.e., canola) does not add any measurable contribution to this exposure according to our analysis.

iv. *Drinking water*. Novartis Crop Protection anticipates the potential exposure from residues of drinking water to be insignificant due to the proposed seed treatment use pattern associated with this petition. The proposed IR–4 use patterns represent a negligible increase in terrestrial food crop application of mefenoxam. Although the potential for ground water contamination for current use patterns cannot be completely excluded where soils are highly permeable and the water table is shallow, the reduced use rate associated with CGA–329351 reduces potential ground water contamination relative to that for metalaxyl. Based on historical ground water monitoring data for metalaxyl from 5 states, levels typically do not exceed 3 ppb. This contamination level would lead to a potential uptake of 0.09 x10–3 mg/kg/day CGA–329351 (for an adult person consuming 2 liters of water per day), which is equivalent to 0.1% of the RfD. On the basis of this worst case estimate for CGA–329351, Novartis concludes that the contribution of any potential ground water contamination will be negligible.

2. *Non-dietary exposure*. CGA–329351 is registered for use as a product for use on turf and ornamentals for control of soil–borne diseases. However, the product is not used residentially by homeowners and the potential exposure to the general public from turf and ornamentals is thought to be negligible.

D. Cumulative Effects

Novartis Crop Protection believes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by CGA–329351 would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population*—i. *Acute risk*. The risk from acute dietary exposure to CGA–329351 is considered to be very low. The NOAEL in a 28-day study was 50 mg/kg, which is 6–fold higher than the chronic NOAEL. Since chronic exposure assessment did not result in any unacceptable exposure for even the most impacted population subgroup, it is anticipated that also the acute exposure will be in an acceptable range. Again, the requested tolerance on rape seed (i.e., canola) was found not to contribute any measurable additional impact on acute exposure to CGA–329351 so that for the general population less than 15% of the acute RfD is utilized.

ii. *Chronic risk*. Under the conservative exposure assumptions of residue levels being at tolerance level, less than 10% of the RfD will be utilized by the U.S. general population. Use on canola does not measurably contribute to this exposure, particularly given that no detectable residues were found even when 3x the use rate was utilized. Therefore, based on the completeness and reliability of the toxicity data supporting this petition, Novartis Crop Protection believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of CGA–329351 taking into account dietary and non–occupational exposures.

2. *Infants and children*. There is no indication that CGA–329351 interferes with the pre–natal or neo–natal development, even when experimental animals were exposed to very high doses leading to maternal toxicity. Infants and children are not expected to show any particular sensitivity to CGA–329351.

i. *Acute risk*. The risk from acute dietary exposure to CGA–329351 is considered to be very low. The NOAEL in a 28–day study was 50 mg/kg, which is 6–fold higher than the chronic NOAEL. According to our analysis there is no measurable impact of the requested tolerance on the exposure to CGA–329351. The utilization of the acute RfD from the most exposed group is 26% (non–nursing infants).

ii. *Chronic risk*. Calculated on the basis of the TMRC for CGA–329351, utilization of RfD from dietary exposure of children is estimated as: 4.3% for nursing infants, 14% for non–nursing infants, 21% for 1 to 6 year old and 12% for children 7–12 years old.

F. International Tolerances

There are no Codex Maximum residue levels established for CGA–329351.

[FR Doc. 00–22011 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–965; FRL–6739–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–965, must be received on or before September 29, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–965 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sharlene Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0514; e-mail address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–965. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway,

Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–965 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–965. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 2000.

Kathleen D. Knox, Acting

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Plant Products Company Ltd.

0F6136

EPA has received a pesticide petition 0F6136 from Plant Products Co. Ltd., f314 Orenda Rd., Brampton, Ontario, Canada L6T 1G1, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Pseudozyma flocculosa* in or on all raw agricultural commodities (RAC). Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Plant Products Co. Ltd. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Plant Products Co. Ltd. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

The active ingredient *Pseudozyma flocculosa* is formulated into the end use product called Sporodex WP Biological Fungicide. Sporodex is a wettable powder that controls powdery mildew on greenhouse-grown English seedless cucumbers and roses.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Pseudozyma flocculosa* is widely distributed as a saprophytic fungal epiphyte and as a

hyperparasite of powdery mildews in Canada, the U.S., and Europe on aerial plant surfaces in field or greenhouse agricultural ecosystems. *Pseudozyma flocculosa* is readily isolated by standard techniques and will grow aerobically on most artificial substrates in liquid and solid fermentations with an optimal pH in the acidic pH range of 4.5–6.8. It assimilates glucose, lactose, maltose, myo-inositol, xylose, ethanol and will grow and sporulate on cellulosic, chitinous, and keratinous natural substrates and is hyperparasitic on powdery mildews.

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. This section is not applicable, as this proposes an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed*. An analytical method for residues is not applicable, as this proposes an exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

No evidence of pathogenicity or infectivity of Sporodex has been demonstrated following acute oral gavage, intraperitoneal and intratracheal challenge studies in rats. No toxicity has been shown following a single oral dose in rats. No toxicity or irritation was observed following a single dermal application in rabbits. Slight toxicity was observed following a single intraperitoneal challenge in rats. However, toxicity observed was due to normal immune response to foreign material deposited in the peritoneal cavity. Toxicity was observed in rats dosed by intratracheal challenge. Mortality was associated with the quantity of test material delivered (6 x 10^7 cells or 3.2 x 10^7 cfu) which was the highest dose deliverable. In an additional study, the minimum lethal dose was shown to be higher than 6 x 10^7 cells, which was the highest dose deliverable. Other signs of toxicity following intracheal challenge were associated with normal immune responses to foreign material in the lung. No reports of human toxicity have been made from those working directly with this microbe for the past 10 years. Conjunctival erythema was seen in five of six rabbits at the 1–scoring, and in two of six rabbits at the 24–hour scoring interval. The highest primary irritation score observed during the study was 1.7 (maximum possible score=110) at the 1–hour scoring interval. No signs of ocular irritation were observed in any rabbits at or following the 48–hour scoring interval. The bioactive compounds produced by *Pseudozyma flocculosa* are not known as genotoxins.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. *Pseudozyma flocculosa* does not exhibit any mammalian toxicity. Therefore, any dietary exposure would not be harmful to humans. Also, *Pseudozyma flocculosa* is a naturally occurring, ubiquitous microorganism indigenous to the United States and Canada.

ii. *Drinking water*. Since, the proposed use is for indoor application in greenhouses only, residues of *Pseudozyma flocculosa* are unlikely to occur in drinking water. Also, *Psuedozyma flocculosa* does not exhibit any mammlian toxicity, therefore any exposure through drinking water would not be harmful to humans.

2. *Non-dietary exposure*. Plant Products Co. Ltd. believes that the potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are primarily agricultural and horticultural and that non-dietary exposures would not be expected to pose any quantifiable risks due to lack of residues of toxicological concern.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of *Pseudozyma flocculosa* and no information to indicate that toxic effects would be cumulative with any other compounds.

F. Safety Determination

1. *U.S. population*. The lack of toxicity of *Pseudozyma flocculosa* has been demonstrated by the results of acute toxicity testing in mammals in which *Pseudozyma flocculosa* caused no adverse effects when dosed oral and via inhalation. Thus, the aggregate exposure to *Pseudozyma flocculosa* over a lifetime should pose negligible risks to human health.

2. *Infants and children*. Based on the lack of toxicity and low exposure, there is a reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to *Pseudozyma flocculosa* residues. Exempting *Pseudozyma flocculosa* from the requirement of a tolerance should pose no significant risk to humans or the environment.

G. Existing Tolerances

Plant Products Co. Ltd. has no information to suggest that *Pseudozyma flocculosa* will adversely affect the immune or endocrine systems.

H. International Tolerances

Plant Products Co. Ltd. is not aware of any tolerances, exemptions from tolerance or maximum residue levels issued for *Pseudozyma flocculosa* outside of the U.S.

[FR Doc. 00–22012 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6860–6]

Project XL Draft Final Project Agreement: State of Pennsylvania Department of Environmental Protection (PADEP) Coal Remining and Reclamation XL Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is requesting comments on a draft Project XL Final Project Agreement (FPA) for the State of Pennsylvania Department of Environmental Protection (PADEP) Coal Remining and Reclamation XL Project (hereafter ''Coal Remining and Reclamation''). The FPA is a voluntary agreement developed collaboratively by PADEP and the EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits.

The Pennsylvania Department of Environmental Protection (PADEP) has proposed a project aimed at improving overall in-stream water quality by reducing acid mine drainage (AMD) and reclaiming scarred lands resulting from abandoned coal mines in Pennsylvania. Under this project, PADEP will explore a new approach to encourage the remining and reclamation of abandoned coal mine sites and provide environmentally responsible incentives for potential reminers.

The proposed approach would be based on compliance with in-stream pollutant concentration limits and implementation of best management practices (''BMPs''), instead of National Pollutant Discharge Elimination System (''NPDES'') numeric effluent limitations measured at individual discharge points. The project will collect data to compare in-stream pollutant concentrations versus the loading from

individual discharge points and provide for the evaluation of the performance of BMPs and this alternate permitting strategy in PADEP's efforts to address AMD. This set of BMPs has been used in many successful remining projects in Pennsylvania to prevent acid mine drainage and reclaim lands that have been harmed by past mining practices. The proposed XL project would provide for a test of this approach in up to eight watersheds with significant AMD pollution.

DATES: The period for submission of comments ends on September 13, 2000.

ADDRESSEES: All comments on the draft Final Project Agreement should be sent to: Steven Donohue, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be faxed to Mr. Donohue at (215) 814–2783. Comments may also be received via electronic mail sent to: donohue.steve@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement or a Fact Sheet, contact: Steven Donohue, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, or Ted Cochin, Office of Environmental Policy Innovation, U.S. EPA, 1200 Pennsylvania Avenue NW (1802), Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: http://www.epa.gov/ProjectXL. Questions to EPA regarding the documents can be directed to Steven Donohue at (215) 814–3215 or Ted Cochin at (202) 260–0880. To be included on the Coal Remining and Reclamation Project XL mailing list for information about future public meetings, XL progress reports and other mailings from PADEP on the XL project, contact Michael Smith, District Mining Manager, Hawk Run District Mining Office, Empire Road, P.O. Box 209, Hawk Run, Pennsylvania 16840–0209. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy, Economics and Innovation, United States Environmental Protection Agency, 1200 Pennsylvania Avenue NW (1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at http://www.epa.gov/ProjectXL.

Dated: August 24, 2000.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 00–22159 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00675; FRL–6740–7]

Pesticides; Harmonization of Treated Seed Policies and Requirements in Canada and the United States; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the availability of a discussion paper that provides information on how pesticide seed treatment products are currently regulated in both Canada and the United States and reviews the degree of harmonization in pesticide regulation in the two countries. The discussion paper on treated seed contributes to the initiatives of the North American Free Trade Agreement (NAFTA) Technical Working Group (TWG) on Pesticides. The NAFTA TWG on Pesticides aims to develop a harmonized approach to the regulation of pesticides in Canada, Mexico, and the United States, while maintaining current high levels of protection of public health and the environment and supporting the principles of sustainable pest management. Canada has also made this harmonization document available for comment through its regulatory processes.

DATES: Comments, identified by docket control number OPP-00675, must be received on or before October 16, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00675 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5944; e-mail address: frane.jean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who produce seed treatment pesticides, or who use such products, both in the United States and Canada. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the NAFTA TWG on Pesticides, go directly to the Home Page at http://www.epa.gov/oppfead1/international, and select ''NAFTA Technical Woking Group (TWG).'' The concurrent Canadian Regulatory Proposal is available on their homepage at http://www.hc-sc.gc.ca.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–00675. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall

#2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00675 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-00675. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the document.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is making available a document entitled ''Discussion Paper: Harmonization of Imported Treated Seed in Canada and the United States'' prepared jointly by the Agency and Health Canada's Pest Management Regulatory Agency (PMRA). The purpose of this document is to provide information on how seed treatment products are currently regulated in both Canada and the United States and to review the degree of regulatory harmonization of seed treatment pesticides in the two countries. This discussion regarding treated seed should also contribute toward the realization of the initiatives of the NAFTA TWG on Pesticides aimed at harmonizing pesticide registration requirements in Canada, the United States, and Mexico.

For the purposes of this document, seed treatments include products which are primarily intended to provide protection against soil fungi and insect damage. Seeds for propagation may be treated domestically or imported as treated seed, may be treated domestically for subsequent export, or may be planted to produce crop that is to be exported.

Both Canada and the United States require registration of seed treatment products used for domestic seed treatment. Both countries allow exemptions for imported pesticide-treated seeds providing the seed is treated with a pesticide registered in the host country for that specific purpose and where certain other conditions are met (e.g., compliance with coloration and labeling requirements). This discussion paper contains two Appendices. Appendix I compares the legal frameworks in the United States and Canada. Appendix II is a comparison of the general data requirements for a new seed treatment product in the United States and Canada.

The Canadian Pest Management Regulatory Agency has issued this document as a Regulatory Proposal with a 45-day comment period.

List of Subjects

Environmental protection, intergovernmental relations, pests and pesticides.

Dated: August 23, 2000.

Anne E. Lindsay,

Director, Field and External Affairs Division.

[FR Doc. 00–22010 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6861–2]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that a proposed prospective purchaser agreement (''Purchaser Agreement'') associated with the North Penn Area 6 Superfund Site, Lansdale Borough, Montgomery County, Pennsylvania was executed by

the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against 701 West Associates LLC. (''Purchaser''). The settlement would require the Purchaser to, among other things, reimburse the Environmental Protection Agency $20,000.00 for response costs incurred and to be incurred at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before September 29, 2000.

ADDRESSES: *Availability.* The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

Comments. Comments should reference the ''North Penn Area 6 Superfund Site, Prospective Purchaser Agreement'' and ''EPA Docket No. CERC–PPA–2000–0004,'' and should be forwarded to Thomas A. Cinti at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Phone: (215) 814–2634

Dated: August 17, 2000.

Bradley M. Campbell,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 00–22163 Filed 8–29–00; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

Date and Place: September 14, 2000, Washington, DC. This meeting will take place in the AIA Boardroom (second floor) of the headquarters of the American Institute of Architects, 1735 New York Avenue, NW., Washington, DC.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Committee of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on Thursday, September 14, 2000, from approximately 8:30 a.m.–11:30 a.m. and 12:45 p.m.–5:00 p.m., to discuss (1) the work of the National Science and Technology Council; and (2) Science and Technology and International Affairs.

Public Comments: There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. Written comments are welcome any time prior to or following the meeting. Please notify Cynthia Chase, of the PCAST Executive Secretariat, at (202) 456–6100, or fax your requests/comments to (202) 456–6026.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place, and agenda, please call Cynthia Chase, of the PCAST Executive Secretariat, at (202) 456–6100, prior to 3:00 p.m. on Wednesday, September 14, 2000. Information may also be available at the PCAST website at: http://www.whitehouse.gov/WH/EOP/OSTP/NSTC/PCAST/pcast.html. Please note that public seating for this meeting is limited, and is available on a first-come first served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993, September 29, 1995, September 29, 1997, and September 30, 1999. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by the Assistant to the President for Science and Technology and, by John Young, former President and CEO of the Hewlett-Packard Company.

Barbara Ann Ferguson,

Assistant Director, Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 00–21688 Filed 8–29–00; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a collection of information under the emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting the collection of information be approved by August 28, 2000.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Act Public Law 93–288, as amended, authorizes the President to provide assistance to individuals and to State and local government to help them to respond to and recover from a disaster. The National Flood Insurance Program (NFIP) has amended the Standard Flood Insurance Policy to address the ''closed basin lake'' continuous flooding circumstance. An endorsement has been added to all policies, allowing policyholders to file a total loss claim for the insured building to be continuously inundated for 90 days. The Closed-Basin Lake Endorsement allows policyholder to file a total loss claim for an insured building that is actually damaged or under imminent threat of flooding, without the requirement for the building to be continuously inundated for 90 days. The claim payment must be used by the policyholder to relocate the structure out of the flood area.

Collection of Information

Title: Closed-Basin Lake Endorsement.

Type of Information Collection: New collection.

OMB Number: 3067

Abstract: In order for a community or area to begin the process of being designated a ''closed basin lake,'' and in order for homeowners and commercial interests to be eligible for a total loss claim under the closed basin lake flood insurance policy endorsement, the community, county, or other local jurisdiction must request this designation in writing to the FEMA Regional Director, through the State NFIP Coordinating Agency. If the Regional Director concurs that a ''close basin lake'' flooding conditions exists, then he or she will forward a written recommendation to FEMA's Mitigation Directorate, that the Flood Insurance Rate Maps (FIRM) be revised to include an Area of Special Consideration (ASC).

FEMA Forms: 81–42, 81–42A, 81–43.

Affected Public: Individuals or Households, Business or Other For Profit, and State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 235.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

ADDRESSES: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: FEMA Desk Officer, Room 10202, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: August 17, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–22172 Filed 8–29–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1338–DR]

District of Columbia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the District of Columbia (FEMA–1338–DR), dated August 17, 2000, and related determinations.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 17, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the District of Columbia, resulting from severe thunderstorms on August 7, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the District of Columbia to have been affected adversely by this declared major disaster:

The District of Columbia for Public Assistance.

The District of Columbia is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–22176 Filed 8–29–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

Chippewa County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora

Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–22171 Filed 8–29–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1337–DR]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey FEMA–1337–DR, dated August 17, 2000, and related determinations.

EFFECTIVE DATE: August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 17, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Jersey, resulting from severe storms, flooding and mudslides on August 12, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared major disaster:

Morris and Sussex Counties for Individual and Public Assistance.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–22175 Filed 8–29–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

Dodge County for Individual Assistance.
Lafayette County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–22174 Filed 8–29–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the Emergency Management Institute.

Dates of Meeting: September 26–27, 2000.

Place: Federal Emergency Management Agency, National Emergency Training Center,

Emergency Management Institute,

Conference Room, Building N, Room 408,

Emmitsburg, Maryland 21727.

Time: Tuesday, September 26, 2000, 8:30 a.m.–5 p.m.

Wednesday, September 27, 2000, 8:30 a.m.–5 p.m.

Proposed Agenda: Status reports on training in response and recovery, planning, mitigation, and simulation and exercises; informal working sessions regarding EMI activities; expansion of the Independent Study program and EMI's Higher Education Program.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: July 19, 2000.

Kay C. Goss,

Associate Director for Preparedness, Training and Exercises.

[FR Doc. 00–22173 Filed 8–29–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011721.

Title: A.P. Moller-Maersk Sealand/CMA–CGM Slot Charter Agreement.

Parties: A.P. Moller-Maersk Sealand (''MSL'') CMA–CGM S.A. (''CMA–CGM'').

Synopsis: The proposed agreement, authorizes MSL to slot charter up to 250 TEUs per vessel per week to CMA–CGM in the trade between the U.S. East and Gulf Coast, and ports in France, the United Kingdom, Germany and the Netherlands. The parties request expedited review.

Dated: August 24, 2000.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–22188 Filed 8–29–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance of License

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by OSRA 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License no.	Name/address	Date reissued
3718F	Sunship International Inc., 6815 W. 95th Street, Suite 1NE, Oak Lawn, IL 60453.	June 30, 2000.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–22189 Filed 8–29–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Total Transport International Corp., 1031 W. Manchester Blvd., Unit F, Inglewood, CA 90301. Officers: Dennis Shui, Vice President, (Qualifying Individual), Miller Lung Lee, Chairman

Arron Shipping, 300 Davey Glen Road, Suite 3429, Belmont, CA 94002. Officers: Michael Choo, Vice President, (Qualifying Individual), Jesse J. Lu, President

Embassy Freight, LLC, 220 B McClellan Highway, East Boston, MA 02128. Officers: Lynda N. Cloutier, Vice President, (Qualifying Individual), Ales Michalec, President

Dated: August 24, 2000.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–22190 Filed 8–29–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, September 5, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–22229 Filed 8–25–00; 4:22 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1081]

Privacy Act of 1974; Publication of Notice of Systems of Records and Amendment of Existing Systems of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; publication of two new systems of records and the amendment of one system of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is publishing notice of two new systems of records, entitled: ''Benefits Records'' (BGFRS–29), and ''Academic Assistance Program Files'' (BGFRS–30); as well as amendments to ''Medical Records'' (BGFRS–3). We invite public comment on this notice.

DATES: The new systems of records and amendments to the existing system of records will become effective without further notice, on October 10, 2000, unless comments dictate otherwise.

ADDRESSES: Comments, which should refer to Docket No. R–1081, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. The mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), or Chris Fields, Manager, Human Resources Function, Management Division (202/452–3654), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. For users of the Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at 202/452–4984.

SUPPLEMENTARY INFORMATION: The establishment of the new systems of records and amendments to one existing system of records result from a review of the Board's information practices conducted in accordance with the President's May 14, 1998, memorandum on privacy and information in federal records.

Unlike most Federal government agencies whose personnel files are maintained by the Office of Personnel Management (OPM), the Board maintains its own personnel-related files because the Board has independent statutory authority to hire staff and set the salary and benefit terms for its staff. Accordingly, the personnel-related files of Board employees are not contained in the government-wide systems of records published by OPM. Nevertheless, the Board's personnel-related files are used in much the same manner as those of other federal employees. Accordingly, after reviewing the routine uses for the existing system of records, the Board has determined to adopt many of the routine uses that are used in OPM's government-wide systems of records.

New Systems of Records

The Benefits Records contain information concerning each employee's benefits, such as health insurance, life insurance, and flexible spending accounts. There records were previously part of each employee's General Personnel File, but a review of record-keeping practices indicated that they should be maintained in a separate file. Accordingly, the Board is publishing a new system of records to describe the information maintained in these separate files.

The system of records for the Academic Assistance Program contains records concerning an employee's external and internal training, and any reimbursements made for such training.

Revised System of Records

The revisions to the existing system of records, Medical Records, incorporate information needed as a result of the Board's adoption of the Drug-Free Workplace Plan and revise the routine uses based on OPM's routine uses for the equivalent government-wide system of records.

In accordance with 5 U.S.C. 552a(r), a report of these actions is being filed with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget.

BGFRS–29

SYSTEM NAME:

Benefits Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees and their named beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

All forms relating to employee's benefits, records relating to claims filed for benefits, and memoranda relating to that individual's benefits. These benefits include: health insurance, dental plan, life insurance, disability coverage, accident insurance, flexible spending accounts, premium conversion accounts, and thrift plan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

To administer the Board's benefits programs for its employees and assist in personnel management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To disclose information to the Board's Thrift Plan, the Board's Group Life Insurance administrators, Department of Labor, Department of Veterans Administration, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose to health insurance carriers that provide a health benefits plan under the Federal Employees Health Benefits Program information that is necessary to verify eligibility for payment of a claim for health benefits.

c. To disclose information, when an individual to whom the record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

d. To disclose pertinent information to the appropriate Federal, State, or

local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

f. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

g. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

h. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

i. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

j. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

k. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

l. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices by the Federal Reserve Board Labor Relations Panel when requested.

m. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

n. To locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

o. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable cabinets and in electronic data bases.

RETRIEVABILILTY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed 65 years after the employee's separation from the Federal government.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System 20th & Constitution, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The employee, the benefit provider, and staff of the Human Resources Function of the Management Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–30

SYSTEM NAME:

Academic Assistance Program Files

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551. The primary files are maintained by the Human Resources Function of the Management Division. Supporting documentation may be maintained in the Division where the employee works or worked.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for academic assistance for external training; registration forms for internal training; technical training participant lists for courses offered by the Board's Information Technology Division; descriptions of course work by employees; course evaluations for completed course work; reimbursement documentation for textbooks and external training; and a data base that tracks all courses (internal and external) taken by employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in its personnel management and in providing training and educational opportunities to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

e. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

f. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

g. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

h. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

i. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices by the Federal Reserve Board Labor Relations Panel when requested.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable cabinets and in electronic data bases.

RETRIEVABILILTY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The technical training participant lists are retained for 2 years, then destroyed. The remaining records are retained for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System 20th & Constitution, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The employee, employee's supervisor, technical training participant list compiled by the Board's Division of Information Technology, external course description material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–3

SYSTEM NAME:

FRB—Medical Records

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board Physician, Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. Records relating to drug-testing under the Drug-Free Workplace Plan may be retained by a contractor laboratory.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees (including special employees). Applicants who have been medically examined for Board employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information relating to: pre-employment medical examinations of potential employees; periodic medical examinations of employees; treatment and/or advice provided by the Health Unit's staff to an employee; an employee's participation in an occupational health services program; the Board's Drug-Free Workplace Plan; and employees' use of the Board's exercise facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564 and 12 U.S.C. 244 and 248(l).

PURPOSE(S):

These records are collected and maintained to assist the Board in determining an employee's fitness for duty, to assist the Board in providing a safe and healthy working environment, and to comply with E.O. 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception of Routine Use ''n,'' none of the other Routine Uses are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the Board, generally only to the Medical Review Officer, the administrator of the Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

In other cases, the information in these records may be used:

a. To disclose information to the Board's Thrift Plan, the Board's Group Life Insurance administrators, Department of Labor, Department of Veterans Administration, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease.

c. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board, where necessary to performance.

d. To disclose information to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request or at the initiation of the Board, information in connection with the retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

h. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

i. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

j. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

k. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

l. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

m. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

n. To disclose the results of a drug test of a Board employee pursuant to an order of a court of competent jurisdiction where required by the U.S. Government to defend against any challenge of any adverse personnel action.

o. To disclose to health insurance carriers that provide a health benefits plan under the Federal Employees Health Benefits Program information that is necessary to verify eligibility for payment of a claim for health benefits.

p. To disclose information, when an individual to whom the record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in file folders or in automated media.

RETRIEVABILITY:

Records are indexed by name, identification number, and/or date of birth.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Records are stored in lockable metal containers or in automated media which is password protected.

RETENTION AND DISPOSAL:

Records are maintained until six years after the employee leaves the Board, at which time they are destroyed, except for correspondence, which is destroyed six months after the employee has left the Board.

SYSTEM MANAGER(S) AND ADDRESS:

Board Physician, Board of Governors of the Federal Reserve System, 20th & Constitution, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above, but see the special procedures set forth in the Board's Rules Regarding Access to and Review of Personal Information Under the Privacy Act, 12 CFR 261a.7.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; an employee's physical or mental health care provider or counselor; the contractor administering the Drug-Free Workplace Plan; official records of other federal agencies; Federal Reserve System personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, August 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–22147 Filed 8–29–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office for Civil Rights

Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency

AGENCY: Office for Civil Rights, HHS.

ACTION: Notice of policy guidance with request for comment.

SUMMARY: The United States Department of Health and Human Services (HHS) is publishing policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance is effective immediately. Comments must be submitted on or before October 30, 2000. OCR will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Carole Brown, Office for Civil Rights, Room 506F, U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201. Comments may also be submitted by e-mail at lepcoms@os.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Carole Brown or Ronald Copeland at the Office for Civil Rights, Room 506F, U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201, telephone 202–619–0805 or 202–619–0553; TDD: 1–800–537–7697. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et. seq. and its implementing regulation at 45 CFR Part 80 provide that no person shall be subjected to discrimination on the basis of race, color or national origin under any program or activity that receives Federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of providers of health and social services who receive Federal financial assistance from the U.S. Department of Health and Human Services (HHS) (''recipients,'' ''providers'' or ''covered entities''), and assist them in fulfilling their responsibilities to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964. The policy guidance reiterates HHS' longstanding position that in order to avoid discrimination against LEP persons on grounds of national origin, health and social service providers must take adequate steps to ensure that such persons receive the language assistance necessary to afford them meaningful access to their services, free of charge. The guidance also clarifies for health and social service providers, and members of the public, that a recipient/covered entity must ensure that eligible LEP persons have meaningful access to programs and services. The guidance also provides examples of policies and practices that OCR would find violative of Title VI, and sets out the policies, procedures and other steps that recipients can take to ensure meaningful access to their programs by LEP persons.

The guidance does not impose any new requirements but reiterates longstanding Title VI principles that OCR has been enforcing for over 30 years. The guidance discusses methods by which recipient/covered entities can meet their obligation to provide oral interpretation to LEP persons. The guidance also outlines the general parameters of a recipient/covered entity's obligation to provide translation of written materials, providing examples that illustrate both the importance of such translation and the flexibility that recipients have in meeting this obligation.

For recipient/covered entities who desire greater certainty in understanding some specific circumstances under which OCR will find them in compliance with the obligation to translate written materials, the guidance contains ''safe harbors.'' A recipient/covered entity that translates written materials under circumstances outlined in the ''safe harbor'' provisions will have assurance that OCR will find it in compliance with its Title VI obligation regarding translation of written materials. These ''safe harbor'' provisions are not mandatory requirements and do not establish numerical thresholds that trigger a requirement for the translation of documents into languages other than English. They are one way for a recipient/covered entity to be assured that it has met the obligation to translate. In fact, the guidance explicitly states that the failure to meet the ''safe harbors'' will not result in a finding of noncompliance, but that OCR will review a number of other factors in determining compliance.

During the past 30 years, OCR has provided substantial technical assistance to recipient/covered entities who were seeking to ensure that LEP persons can meaningfully access their

programs or services. This guidance synthesizes that experience so as to better assist recipient/covered entities in meeting their responsibilities and also stresses OCR's legal obligation and commitment to seeking voluntary compliance by recipient/covered entities and its commitment to providing technical assistance. OCR will continue to be available to provide such assistance.

This policy guidance addresses situations and issues presented by HHS-funded health and social service programs and is not necessarily transferable to other federal programs or contexts.

The text of the guidance appears below. Appendix A to the guidance is a series of questions and answers that provides a useful summary of a number of the major aspects of the guidance.

Dated: August 3, 2000.

Thomas E. Perez,

Director, Office for Civil Rights.

Policy Guidance

Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency

A. Background

English is the predominant language of the United States. According to the 1990 Census, English is spoken by 95% of its residents. Of those U.S. residents who speak languages other than English at home, the 1990 Census reports that 57% above the age of four speak English ''well to very well.''

The United States is also, however, home to millions of national origin minority individuals who are ''limited English proficient'' (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively with health care providers and social service agencies. Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, experience delays or denials of services, or receive care and services based on inaccurate or incomplete information.

In the course of its enforcement activities, OCR has found that persons who lack proficiency in English frequently are unable to obtain basic knowledge of how to access various benefits and services for which they are eligible, such as the State Children's Health Insurance Program (SCHIP), Medicare, Medicaid or Temporary Assistance to Needy Families (TANF) benefits, clinical research programs, or basic health care and social services. For example, many intake interviewers and other front line employees who interact with LEP individuals are neither bilingual nor trained in how to properly serve an LEP person. As a result, the LEP applicant all too often is either turned away, forced to wait for substantial periods of time, forced to find his/her own interpreter who often is not qualified to interpret, or forced to make repeated visits to the provider's office until an interpreter is available to assist in conducting the interview.

The lack of language assistance capability among provider agency employees has especially adverse consequences in the area of professional staff services, such as health services. Doctors, nurses, social workers, psychologists, and other professionals provide vitally important services whose very nature requires the establishment of a close relationship with the client or patient that is based on empathy, confidence and mutual trust. Such intimate personal relationships depend heavily on the free flow of communication between professional and client. This essential exchange of information is difficult when the two parties involved speak different languages; it may be impeded further by the presence of an unqualified third person who attempts to serve as an interpreter.

Some health and social service providers have sought to bridge the language gap by encouraging language minority clients to provide their own interpreters as an alternative to the agency's use of qualified bilingual employees or interpreters. Persons of limited English proficiency must sometimes rely on their minor children to interpret for them during visits to a health or social service facility. Alternatively, these clients may be required to call upon neighbors or even strangers they encounter at the provider's office to act as interpreters or translators.

These practices have severe drawbacks and may violate Title VI of the Civil Rights Act of 1964. In each case, the impediments to effective communication and adequate service are formidable. The client's untrained ''interpreter'' is often unable to understand the concepts or official terminology he or she is being asked to interpret or translate. Even if the interpreter possesses the necessary language and comprehension skills, his or her mere presence may obstruct the flow of confidential information to the provider. This is because the client would naturally be reluctant to disclose or discuss intimate details of personal and family life in front of the client's child or a complete stranger who has no formal training or obligation to observe confidentiality.

When these types of circumstances are encountered, the level and quality of health and social services available to persons of limited English proficiency stand in stark conflict to Title VI's promise of equal access to federally assisted programs and activities. Services denied, delayed or provided under adverse circumstances have serious and sometimes life threatening consequences for an LEP person and generally will constitute discrimination on the basis of national origin, in violation of Title VI. Accommodation of these language differences through the provision of effective language assistance will promote compliance with Title VI. Moreover, by ensuring accurate client histories, better understanding of exit and discharge instructions, and better assurances of informed consent, providers will better protect themselves against tort liability, malpractice lawsuits, and charges of negligence.

Although OCR's enforcement authority derives from Title VI, the duty of health and human service providers to ensure that LEP persons can meaningfully access programs and services flows from a host of additional sources, including federal and state laws and regulations, managed care contracts, and health care accreditation organizations.[1] In addition, the duty to provide appropriate language assistance to LEP individuals is not limited to the health and human service context. Numerous federal laws require the provision of language assistance to LEP individuals seeking to access critical services and activities. For instance, the Voting Rights Act bans English-only elections in certain circumstances and outlines specific measures that must be taken to ensure that language minorities can participate in elections. *See* 42 U.S.C. 1973b(f)(1). Similarly, the Food Stamp Act of 1977 requires states to provide written and oral language assistance to LEP persons under certain circumstances. 42 U.S.C. Section 2020(e)(1) and (2). These and other provisions reflect the sound judgment that providers of critical services and benefits bear the responsibility for ensuring that LEP individuals can meaningfully access their programs and services.

OCR issued internal guidance to its staff in January 1998 on a recipient's obligation to provide language assistance to LEP persons. That

[1] A description of these requirements is included as Appendix B to this policy guidance.

guidance was intended to ensure consistency in OCR's investigation of LEP cases. This current guidance clarifies for recipient/covered entities and the public, the legal requirements under Title VI that OCR has been enforcing for the past 30 years.

This policy guidance is consistent with a Department of Justice (DOJ) directive noting that recipient/covered entities have an obligation pursuant to Title VI's prohibition against national origin discrimination to provide oral and written language assistance to LEP persons.[2] It is also consistent with a government-wide Title VI regulation issued by DOJ in 1976, ''Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs,'' 28 C.F.R. Part 42, Subpart F, that addresses the circumstances in which recipient/covered entities must provide written language assistance to LEP persons.[3]

B. Legal Authority

1. Introduction

Over the last 30 years, OCR has conducted thousands of investigations and reviews involving language differences that impede the access of LEP persons to medical care and social services. Where the failure to accommodate language differences discriminates on the basis of national origin, OCR has required recipient/covered entities to provide appropriate language assistance to LEP persons. For instance, OCR has entered into voluntary compliance agreements and consent decrees that require recipients who operate health and social service programs to ensure that there are bilingual employees or language interpreters to meet the needs of LEP persons seeking services. OCR has also required these recipient/covered entities to provide written materials and post notices in languages other than English. *See Mendoza* v. *Lavine,* 412 F.Supp. 1105 (S.D.N.Y. 1976); and *Asociacion Mixta Progresista* v. *H.E.W.,* Civil Number C72–882 (N.D. Cal. 1976). The legal authority for OCR's enforcement actions is Title VI of the Civil Rights Act of 1964, the implementing regulations, and a consistent body of case law. The legal authority is described below.

2. Statute and Regulation

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d *et. seq.* states: ''No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.''

Regulations implementing Title VI, provide in part at 45 CFR Section 80.3 (b):

''(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program or the class of individuals to whom, or the situations in which such services, financial aid or other benefits, or facilities will be provided .–.–. *may not directly, or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination, because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular, race, color or national origin.*'' (emphasis added).

3. Case Law

Extensive case law affirms the obligation of recipients of federal financial assistance to ensure that LEP persons can meaningfully access federal-assisted programs.

The U.S. Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), recognized that recipients of Federal financial assistance have an affirmative responsibility, pursuant to Title VI, to provide LEP persons with meaningful opportunity to participate in public programs. In *Lau* v. *Nichols*, the Supreme Court ruled that a public school system's failure to provide English language instruction to students of Chinese ancestry who do not speak English denied the students a meaningful opportunity to participate in a public educational program in violation of Title VI of the Civil Rights Act of 1964.

The *Lau* decision affirmed the U.S. Department of Health, Education and Welfare's Policy Memorandum issued on May 25, 1970, titled ''Identification of Discrimination and the Denial of Services on the Basis of National Origin,'' 35 FR 11,595. The memorandum states in part: ''Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.''

As early as 1926, the Supreme Court recognized that language rules were often discriminatory. In *Yu Cong Eng et. al.* v. *Trinidad, Collector of Internal Revenue*, 271 U.S. 500 (1926), the Supreme Court found that a Philippine Bookkeeping Act that prohibited the keeping of accounts in languages other than English, Spanish and Philippine dialects violated the Philippine Bill of Rights that Congress had patterned after the U.S. Constitution. The Court found that the Act deprived Chinese merchants, who were unable to read, write or understand the required languages, of liberty and property without due process.

In *Gutierrez* v. *Municipal Court of S.E. Judicial District*, 838 F.2d 1031,1039 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989), the court recognized that requiring the use of English only is often used to mask national origin discrimination. Citing McArthur, *Worried About Something Else*, 60 Int'l J. Soc. Language, 87, 90–91 (1986), the court stated that because language and accents are identifying characteristics, rules that have a negative effect on bilingual persons, individuals with accents, or non-English speakers may be mere pretexts for intentional national origin discrimination.

Another case that noted the link between language and national origin discrimination is *Garcia* v. *Gloor*, 618 F.2d 264 (5th Cir. 1980) *cert. denied*, 449 U.S. 1113 (1981). The court found that on the facts before it a workplace English-only rule did not discriminate on the basis of national origin since the complaining employees were bilingual. However, the court stated that ''to a person who speaks only one tongue or to a person who has difficulty using

[2] The DOJ directive was issued on August 11, 2000.

[3] The DOJ coordination regulations at 28 C.F.R. Section 42.405(d)(1) provide that ''[w]here a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.''

another language other than the one spoken in his home, language might well be an immutable characteristic like skin color, sex or place of birth.'' *Id.* At 269.

The Fifth Circuit addressed language as an impermissible barrier to participation in society in *U.S.* v. *Uvalde Consolidated Independent School District*, 625 F2d 547 (5th Cir. 1980). The court upheld an amendment to the Voting Rights Act which addressed concerns about language minorities, the protections they were to receive, and eliminated discrimination against them by prohibiting English-only elections.

Most recently, the Eleventh Circuit in *Sandoval* v. *Hagan*, 197 F. 3d 484 (11th Cir. 1999), *petition for cert. filed*, May 30, 2000, held that the State of Alabama's policy of administering a driver's license examination in English only was a facially neutral practice that had an adverse effect on the basis of national origin, in violation of Title VI. The court specifically noted the nexus between language policies and potential discrimination based on national origin. That is, in *Sandoval*, the vast majority of individuals who were adversely affected by Alabama's English-only driver's license examination policy were national origin minorities.

In the health and human service context, a recipient's failure to provide appropriate language assistance to LEP individuals parallels many of the fact situations discussed in the cases above and, as in those cases, may have an adverse effect on the basis of national origin, in violation of Title VI.

The Title VI regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient/covered entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services. Accordingly, it is useful for recipient/covered entities to examine their policies and practices to determine whether they adversely affect LEP persons. This policy guidance provides a legal framework to assist recipient/covered entities in conducting such assessments.

C. Policy Guidance

1. Who is Covered

All entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance. Covered entities include: (1) Any state or local agency, private institution or organization, or any public or private individual that; (2) operates, provides or engages in health, or social service programs and activities and that; (3) receives federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs, state, county and local health agencies, state Medicaid agencies, state, county and local welfare agencies, programs for families, youth and children, Head Start programs, public and private contractors, subcontractors and vendors, physicians, and other providers who receive Federal financial assistance from HHS.

The term Federal financial assistance to which Title VI applies includes but is not limited to grants and loans of Federal funds, grants or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract which has as one of its purposes the provision of assistance. (See, 45 CFR Section 80.13(f); and Appendix A to the Title VI regulations, 45 CFR Part 80, for additional discussion of what constitutes Federal financial assistance).

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA provides that, in most cases, when a recipient/covered entity receives Federal financial assistance for a particular program or activity, all operations of the recipient/covered entity are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance is used only by one part.

2. Basic Requirements Under Title VI

A recipient/covered entity whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a federally-assisted program on the basis of national origin may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, recipient/covered entities must take steps to ensure that LEP persons who are eligible for their programs or services have meaningful access to the health and social service benefits that they provide. The most important step in meeting this obligation is for recipients of Federal financial assistance such as grants, contracts, and subcontracts to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

The type of language assistance a recipient/covered entity provides to ensure meaningful access will depend on a variety of factors, including the size of the recipient/covered entity, the size of the eligible LEP population it serves, the nature of the program or service, the objectives of the program, the total resources available to the recipient/covered entity, the frequency with which particular languages are encountered, and the frequency with which LEP persons come into contact with the program. There is no ''one size fits all'' solution for Title VI compliance with respect to LEP persons. OCR will make its assessment of the language assistance needed to ensure meaningful access on a case by case basis, and a recipient/covered entity will have considerable flexibility in determining precisely how to fulfill this obligation. OCR will focus on the end result—whether the recipient/covered entity has taken the necessary steps to ensure that LEP persons have meaningful access to its programs and services.

The key to providing meaningful access for LEP persons is to ensure that the recipient/covered entity and LEP person can communicate effectively. The steps taken by a covered entity must ensure that the LEP person is given adequate information, is able to understand the services and benefits available, and is able to receive those for which he or she is eligible. The covered entity must also ensure that the LEP person can effectively communicate the relevant circumstances of his or her situation to the service provider.

In enforcing Title VI and its application to LEP persons over the last 30 years, OCR has found that effective language assistance programs usually contain the four elements described in section three below. In reviewing complaints and conducting compliance reviews, OCR will consider a program to be in compliance when the recipient/covered entity effectively incorporates and implements these four elements. The failure to incorporate or implement one or more of these elements does not necessarily mean noncompliance with Title VI, and OCR will review the totality of the circumstances to determine whether LEP persons can

meaningfully access the services and benefits of the recipient/covered entity.

3. Ensuring Meaningful Access to LEP Persons

(a) Introduction—The Four Keys to Title VI Compliance in the LEP Context

The key to providing meaningful access to benefits and services for LEP persons is to ensure that the language assistance provided results in accurate and effective communication between the provider and LEP applicant/client about the types of services and/or benefits available and about the applicant's or client's circumstances. Although HHS recipients have considerable flexibility in fulfilling this obligation, OCR has found that effective programs usually have the following four elements:

—Assessment—The recipient/covered entity conducts a thorough assessment of the language needs of the population to be served;
—Development of Comprehensive Written Policy on Language Access—The recipient/covered entity develops and implements a comprehensive written policy that will ensure meaningful communication;
—*Training of Staff*—The recipient/covered entity takes steps to ensure that staff understands the policy and is capable of carrying it out; and
—Vigilant Monitoring—The recipient/covered entity conducts regular oversight of the language assistance program to ensure that LEP persons meaningfully access the program.

The failure to implement one or more of these measures does not necessarily mean noncompliance with Title VI, and OCR will review the totality of the circumstances in each case. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient/covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services, OCR will not find the recipient/covered entity in noncompliance.

(b) Assessment

The first key to ensuring meaningful access is for the recipient/covered entity to assess the language needs of the affected population. A recipient/covered entity assesses language needs by:

• identifying the non-English languages that are likely to be encountered in its program and by estimating the number of LEP persons that are eligible for services and that are likely to be directly affected by its program. This can be done by reviewing census data, client utilization data from client files, and data from school systems and community agencies and organizations;

• identifying the language needs of each LEP patient/client and recording this information in the client's file;

• identifying the points of contact in the program or activity where language assistance is likely to be needed;

• identifying the resources that will be needed to provide effective language assistance; identifying the location and availability of these resources; and

• identifying the arrangements that must be made to access these resources in a timely fashion.

(c) Development of Comprehensive Written Policy on Language Access

A recipient/covered entity can ensure effective communication by developing and implementing a comprehensive written language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP applicants/clients, and that provides for a range of oral language assistance options, notice to LEP persons in a language they can understand of the right to free language assistance, periodic training of staff, monitoring of the program, and translation of written materials in certain circumstances.[4]

(1) *Oral Language Interpretation*—In designing an effective language assistance program, a recipient/covered entity develops procedures for obtaining and providing trained and competent interpreters and other oral language assistance services, in a timely manner, by taking some or all of the following steps:

• Hiring bilingual staff who are trained and competent in the skill of interpreting;

• Hiring staff interpreters who are trained and competent in the skill of interpreting;

• Contracting with an outside interpreter service for trained and competent interpreters;

• Arranging formally for the services of voluntary community interpreters who are trained and competent in the skill of interpreting;

• Arranging/contracting for the use of a telephone language interpreter service. See Section 3(e)(2) for a discussion on ''Competence of Interpreters.''

The following provides guidance to recipient/covered entities in determining which language assistance options will be of sufficient quantity and quality to meet the needs of their LEP beneficiaries:

Bilingual Staff—Hiring bilingual staff for patient and client contact positions facilitates participation by LEP persons. However, where there are a variety of LEP language groups in a recipient's service area, this option may be insufficient to meet the needs of all LEP applicants and clients. Where this option is insufficient to meet the needs, the recipient/covered entity must provide additional and timely language assistance. Bilingual staff must be trained and must demonstrate competence as interpreters.

Staff Interpreters—Paid staff interpreters are especially appropriate where there is a frequent and/or regular need for interpreting services. These persons must be competent and readily available.

Contract Interpreters—The use of contract interpreters may be an option for recipient/covered entities that have an infrequent need for interpreting services, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as-needed basis. Such contract interpreters must be readily available and competent.

Community Volunteers—Use of community volunteers may provide recipient/covered entities with a cost-effective method for providing interpreter services. However, experience has shown that to use community volunteers effectively, recipient/covered entities must ensure that formal arrangements for interpreting services are made with community organizations so that these organizations are not subjected to ad hoc requests for assistance. In addition, recipient/covered entities must ensure that these volunteers are competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service.

Telephone Interpreter Lines—A telephone interpreter service line may be a useful option as a supplemental system, or may be useful when a recipient/covered entity encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many

[4] The Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 both provide similar prohibitions against discrimination on the basis of disability and require entities to provide language assistance such as sign language interpreters for hearing impaired individuals or alternative formats such as braille, large print or tape for vision impaired individuals. In developing a comprehensive language assistance program, recipient/covered entities should be mindful of their responsibilities under the ADA and Section 504 to ensure access to programs for individuals with disabilities.

different languages and usually can provide the service in quick response to a request. However, recipient/covered entities should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service. It is important that a recipient/covered entity not offer this as the only language assistance option except where other language assistance options are unavailable (e.g., in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area).

(2) *Translation of Written Materials*—An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are available in regularly encountered languages other than English. It is particularly important to ensure that vital documents, such as applications, consent forms, letters containing important information regarding participation in a program (such as a cover letter outlining conditions of participation in a Medicaid managed care program), notices pertaining to the reduction, denial or termination of services or benefits, of the right to appeal such actions or that require a response from beneficiaries, notices advising LEP persons of the availability of free language assistance, and other outreach materials be translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the recipient/covered entity's program. However, OCR recognizes that each federally-funded health and social service program has unique characteristics. Therefore, OCR will collaborate with respective HHS agencies in determining which documents and information are deemed to be vital.

As part of its overall language assistance program, a recipient must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served or likely to be directly affected by the program needs services or information in a language other than English to communicate effectively. 28 CFR Section 42.405(d)(1). OCR will determine the extent of the recipient/covered entity's obligation to provide written translation of documents on a case by case basis, taking into account all relevant circumstances, including the nature of the recipient/covered entity's services or benefits, the size of the recipient/covered entity, the number and size of the LEP language groups in its service area, the nature and length of the document, the objectives of the program, the total resources available to the recipient/covered entity, the frequency with which translated documents are needed, and the cost of translation.

One way for a recipient/covered entity to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the recipient/covered entity to meet the guidelines outlined in paragraphs (A) and (B) below.

Paragraphs (A) and (B) outline the circumstances that provide a ''safe harbor'' for recipient/covered entities. A recipient/covered entity that provides written translations under these circumstances can be confident that it will be found in compliance with its obligation under Title VI regarding written translations.[5] However, the failure to provide written translations under these circumstances outlined in paragraphs (A) and (B) will not necessarily mean noncompliance with Title VI.

In such circumstances, OCR will review the totality of the circumstances to determine the precise nature of a recipient/covered entity's obligation to provide written materials in languages other than English. If written translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of its program, or if there is an alternative means of ensuring that LEP persons have meaningful access to the information provided in the document (such as timely, effective oral interpretation of vital documents), OCR will not find the translation of written materials necessary for compliance with Title VI.

OCR will consider a recipient/covered entity to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

(A) The recipient/covered entity provides translated written materials, including vital documents, for each eligible LEP language group that constitutes ten percent or 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected by the recipient/covered entity's program[6];

(B) Regarding LEP language groups that do not fall within paragraph (A) above, but constitute five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected, the recipient/covered entity ensures that, at a minimum, vital documents are translated into the appropriate non-English languages of such LEP persons. Translation of other documents, if needed, can be provided orally; and

(C) Notwithstanding paragraphs (A) and (B) above, a recipient with fewer than 100 persons in a language group eligible to be served or likely to be directly affected by the recipient/covered entity's program, does not translate written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of written materials.

The term ''persons eligible to be served on likely to be directly affected'' relates to the issue of what is the recipient/covered entity's service area for purposes of meeting its Title VI obligation. There is no ''one size fits all'' definition of what constitutes ''persons eligible to be served or likely to be directly affected'' and OCR will address this issue on a case by case basis.

Ordinarily, persons eligible to be served or likely to be directly affected by a recipient's program are those persons who are in the geographic area that has been approved by a Federal grant agency as the recipient/covered entity's service area, and who either are eligible for the recipient/covered entity's benefits or services, or otherwise might be directly affected by such an entity's conduct. For example, a parent who might seek services for a child would be seen as likely to be affected by a recipient/covered entity's policies and practices. Where no service area has been approved by a Federal grant agency, OCR will consider the relevant service area for determining persons eligible to be served as that designated and/or approved by state or local authorities or designated by the recipient/covered entity itself, provided that these designations do not

[5] The ''safe harbor'' provisions in paragraphs (A) and (B) below are not intended to establish numerical thresholds for when a recipient must translate documents. The numbers and percentages included in these provisions are based on the balancing of a number of factors, including OCR's experience in enforcing Title VI in the context of health and human services programs, and OCR's discussions with other Department agencies about experiences of their grant recipient/covered entities with language access issues.

[6] As noted above, vital documents include applications, consent forms, letters containing information regarding eligibility or participation criteria, and notices pertaining to reduction, denial or termination of services or benefits, that require a response from beneficiaries, and/or that advise of free language assistance. Large documents, such as enrollment handbooks, may not need to be translated in their entirety. However, vital information contained in large documents must be translated.

themselves discriminatorily exclude certain populations. OCR may also determine the service area to be the geographic areas from which the recipient draws, or can be expected to draw, clients/patients. The following are examples of how OCR would determine the relevant service areas when assessing who is eligible to be served or likely to be affected:

• A complaint filed with OCR alleges that a private hospital discriminates against Hispanic and Chinese LEP patients by failing to provide such persons with language assistance, including written translations of consent forms. The hospital identifies its service area as the geographic area identified in its marketing plan. OCR determines that a substantial number of the hospital's patients are drawn from the area identified in the marketing plan and that no area with concentrations of racial, ethnic or other minorities is discriminatorily excluded from the plan. OCR is likely to accept the area identified in the marketing plan as the relevant service area.

• A state enters into a contract with a managed care plan for the provision of health services to Medicaid beneficiaries. The Medicaid managed care contract provides that the plan will serve beneficiaries in three counties. The contract is reviewed and approved by HHS. In determining the persons eligible to be served or likely to be affected, the relevant service area would be that designated in the contract.

As this guidance notes, Title VI provides that no person may be denied meaningful access to a recipient/covered entity's benefits and services, on the basis of national origin. To comply with the Title VI requirement, a recipient/covered entity must ensure that LEP persons have meaningful access to and can understand information contained in program-related written documents. Thus, for language groups that do not fall within paragraphs (A) and (B), above, a recipient can ensure such access by, at a minimum, providing notice, in writing, in the LEP person's primary language, of the right to receive free language assistance in a language other than English, including the right to competent oral translation of written materials, free of cost.

Recent technological advances have made it easier for recipient/covered entities to store translated documents readily. At the same time, OCR recognizes that recipient/covered entities in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. It would be unduly burdensome to demand that recipient/covered entities in these circumstances translate all written materials into dozens, if not more than 100 languages. As a result, OCR will determine the extent of the recipient/covered entity's obligation to provide written translations of documents on a case by case basis, looking at the totality of the circumstances.[7]

It is also important to ensure that the person translating the materials is well qualified. In addition, it is important to note that in some circumstances verbatim translation of materials may not accurately or appropriately convey the substance of what is contained in the written materials. An effective way to address this potential problem is to reach out to community-based organizations to review translated materials to ensure that they are accurate and easily understood by LEP persons.

(3) *Methods for Providing Notice to LEP Persons*—A vital part of a well-functioning compliance program includes having effective methods for notifying LEP persons regarding their right to language assistance and the availability of such assistance free of charge. These methods include but are not limited to:

—Use of language identification cards which allow LEP beneficiaries to identify their language needs to staff and for staff to identify the language needs of applicants and clients. To be effective, the cards (e.g., ''I speak cards'') must invite the LEP person to identify the language he/she speaks. This identification must be recorded in the LEP person's file;

—Posting and maintaining signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs must inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services;

—Translation of application forms and instructional, informational and other written materials into appropriate non-English languages by competent translators. For LEP persons whose language does not exist in written form, assistance from an interpreter to explain the contents of the document;

—Uniform procedures for timely and effective telephone communication between staff and LEP persons. This must include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from or initiating calls to LEP persons; and

—Inclusion of statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.

(d) Training of Staff

Another vital element in ensuring that its policies are followed is a recipient/covered entity's dissemination of its policy to all employees likely to have contact with LEP persons, and periodic training of these employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters. It is important that this training be part of the orientation for new employees and that all employees in client contact positions be properly trained. Given the high turnover rate among some employees, recipient/covered entities may find it useful to maintain a training registry that records the names and dates of employees' training. Over the years, OCR has observed that recipient/covered entities often develop effective language assistance policies and procedures but that employees are unaware of the policies, or do not know how to, or otherwise fail to, provide available assistance. Effective training is one means of ensuring that there is not a gap between a recipient/covered entity's written policies and procedures, and the actual practices of employees who are in the front lines interacting with LEP persons.

[7] For instance, a Medicaid managed care program that regularly encounters, or potentially will encounter on a regular basis, LEP persons who speak dozens or perhaps over 100 different languages, would not be required to translate the lengthy program brochure into every regularly encountered language. Rather, the recipient/covered entity in these circumstances would likely be required to translate the written materials into the most frequently encountered languages. Regarding the remaining regularly encountered languages, the recipient/covered entity would be required to ensure that the LEP person receives written notification in the appropriate non-English language of the right to free oral translation of the written materials. In addition, the recipient/covered entity would frequently be required to provide written translations of vital documents that are short in length and pertain to important aspects of critical programs, such as a cover letter that outlines the terms and conditions of participation in a Medicaid managed care program, and/or contains time sensitive information about enrollment or continued participation.

(e) Monitoring

It is also crucial for a recipient/covered entity to monitor its language assistance program at least annually to assess the current LEP makeup of its service area, the current communication needs of LEP applicants and clients, whether existing assistance is meeting the needs of such persons, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are still current and viable. One element of such an assessment is for a recipient/covered entity to seek feedback from clients and advocates. OCR has found that compliance with the Title VI language assistance obligation is most likely when a recipient/covered entity continuously monitors its program, makes modifications where necessary, and periodically trains employees in implementation of the policies and procedures.

4. OCR's Assessment of Meaningful Access

The failure to take all of the steps outlined in Section C. 3, above, will not necessarily mean that a recipient/covered entity has failed to provide meaningful access to LEP clients. As noted above, OCR will make assessments on a case by case basis and will consider several factors in assessing whether the steps taken by a recipient/covered entity provide meaningful access. Those factors include the size of the recipient/covered entity and of the eligible LEP population, the nature of the program or service, the objectives of the program, the total resources available, the frequency with which particular languages are encountered, and the frequency with which LEP persons come into contact with the program. The following are examples of how meaningful access will be assessed by OCR:

—A physician, a sole practitioner, has about 50 LEP Hispanic patients. He has a staff of two nurses and a receptionist, derives a modest income from his practice, and receives Medicaid funds. He asserts that he cannot afford to hire bilingual staff, contract with a professional interpreter service, or translate written documents. To accommodate the language needs of his LEP patients, he has made arrangements with a Hispanic community organization for trained and competent volunteer interpreters, and with a telephone interpreter language line, to interpret during consultations and to orally translate written documents. There have been no client complaints of inordinate delays or other service related problems with respect to LEP clients. Given the physician's resources, the size of his staff, and the size of the LEP population, OCR would find the physician in compliance with Title VI.

—A county TANF program, with a large budget, serves 500,000 beneficiaries. Of the beneficiaries eligible for its services, 3,500 are LEP Chinese persons, 4,000 are LEP Hispanic persons, 2000 are LEP Vietnamese persons and about 400 are LEP Laotian persons. The county has no policy regarding language assistance to LEP persons, and LEP clients are told to bring their own interpreters, are provided with application and consent forms in English and if unaccompanied by their own interpreters, must solicit the help of other clients or must return at a later date with an interpreter. Given the size of the county program, its resources, the size of the eligible LEP population, and the nature of the program, OCR would likely find the county in violation of Title VI and would likely require it to develop a comprehensive language assistance program that includes all of the options discussed in Section C. 3, above.

—A large national corporation receives TANF funds from a local welfare agency to provide computer training to TANF beneficiaries. Of the 2000 clients that are trained by the corporation each month, approximately one-third are LEP Hispanic persons. The corporation has made no arrangements for language assistance and relies on bilingual Hispanic students in class to help LEP students understand the oral instructions and the written materials. Based on the size of the welfare agency and corporation, their budgets, the size of the LEP population, and the nature of the program, OCR would likely find both the welfare agency and the corporation in noncompliance with Title VI. The welfare agency would likely be found in noncompliance for failing to provide LEP clients meaningful access to its benefits and services through its contract with the corporation, and for failing to monitor the training program to ensure that it provided such access. OCR would likely also find the corporation in noncompliance for failing to provide meaningful access to LEP clients and would require it to provide them with both oral and written language assistance.

5. Interpreters

Two recurring issues in the area of interpreter services involve (a) the use of friends, family, or minor children as interpreters, and (b) the need to ensure that interpreters are competent, especially in the area of medical interpretation.

(a) *Use of Friends, Family and Minor Children as Interpreters*—A recipient/covered entity may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In a medical setting, this reluctance could have serious, even life threatening, consequences. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology.

If after a recipient/covered entity informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the recipient/covered entity may use the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The recipient/covered entity should document the offer and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the recipient/covered entity should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

(b) *Competence of Interpreters*—In order to provide effective services to LEP persons, a recipient/covered entity must ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful. On the other hand, competency requires more than self-identification as bilingual. The competency requirement contemplates demonstrated proficiency in both English and the other language, orientation and training that includes the skills and ethics of interpreting (e.g. issues of confidentiality), fundamental knowledge in both languages of any specialized terms, or concepts peculiar to the recipient/covered entity's

program or activity, sensitivity to the LEP person's culture and a demonstrated ability to convey information in both languages, accurately. A recipient/covered entity must ensure that those persons it provides as interpreters are trained and demonstrate competency as interpreters.

6. Examples of Frequently Encountered Scenarios

Over the course of the past 30 years enforcing Title VI in the LEP context, OCR has observed a number of recurring problems. The following are examples of frequently encountered policies and practices that are likely to violate Title VI:

—A woman is brought to the emergency room of a hospital by her brother. The hospital has no language assistance services and requires her brother to interpret for her. She is too embarrassed to discuss her condition through her brother and leaves without treatment.

—Alternatively, she is forced to use her brother as the interpreter, who is untrained in medical terminology and through whom she refuses to discuss sensitive information pertaining to her medical condition.

—A health clinic uses a Spanish-speaking security guard who has no training in interpreting skills and is unfamiliar with medical terminology, as an interpreter for its Hispanic LEP patients. He frequently relays inaccurate information that results in inaccurate instructions to patients.

—A local welfare office uses a Vietnamese janitor to interpret whenever Vietnamese applicants or beneficiaries seek services or benefits. The janitor has been in America for six months, does not speak English well and is not familiar with the terminology that is used. He often relays inaccurate information that results in the denial of benefits to clients.

—A state welfare agency does not advise a mother of her right to free language assistance and encourages her to use her eleven year old daughter to interpret for her. The daughter does not understand the terminology being used and relays inaccurate information to her mother whose benefits are jeopardized by the failure to obtain accurate information.

—A medical clinic uses a medical student as an interpreter based on her self-identification as bilingual. While in college, the student had spent a semester in Spain as an exchange student. The student speaks Spanish haltingly and must often ask patients to speak slowly and to repeat their statements. On several occasions, she has relayed inaccurate information that has resulted in misdiagnosis.

—A managed care plan calls the receptionist at an Ethiopian community organization whenever it or one of its providers needs the services of an interpreter for an Ethiopian patient. The plan instructs the receptionist to send anyone who is available as long as that person speaks English. Many of the interpreters sent to a provider either do not understand English well enough to interpret accurately or are unfamiliar with medical terminology. As a result, clients often misunderstand their rights and benefits.

—A local welfare office forces a Mandarin-speaking client seeking to apply for SCHIP benefits on behalf of her three year old child to wait for a number of hours (or tells the client to come back another day) to receive assistance because it cannot communicate effectively with her, and has no effective plan for ensuring meaningful communication. This results in a delay of benefits.

—An HMO that enrolls Medicaid beneficiaries instructs a non-English speaking client to provide his or her own interpreter services during all office visits.

—A health plan requires non-English speaking patients to pay for interpreter services.

D. Promising Practices

In meeting the needs of their LEP patients and clients, some recipient/covered entities have found unique ways of providing interpreter services and reaching out to the LEP community. As part of its technical assistance, OCR has frequently assisted, and will continue to assist, recipient/covered entities who are interested in learning about promising practices in the area of service to LEP populations. Examples of promising practices include the following:

Simultaneous Translation—One urban hospital is testing a state of the art medical interpretation system in which the provider and patient communicate using wireless remote headsets while a trained competent interpreter, located in a separate room, provides simultaneous interpreting services to the provider and patient. The interpreter can be miles away. This reduces delays in the delivery of language assistance, since the interpreter does not have to travel to the recipient/covered entity's facility. In addition, a provider that operates more than one facility can deliver interpreter services to all facilities using this central bank of interpreters, as long as each facility is equipped with the proper technology.

Language Banks—In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services, or where there is a large variety of language needs.

Language Support Office—A state social services agency has established an ''Office for Language Interpreter Services and Translation.'' This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

Multicultural Delivery Project—Another county agency has established a ''Multicultural Delivery Project'' that is designed to find interpreters to help immigrants and other LEP persons to navigate the county health and social service systems. The project uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.

Pamphlets—A hospital has created pamphlets in several languages, entitled ''While Awaiting the Arrival of an Interpreter.'' The pamphlets are intended to facilitate basic communication between inpatients/outpatients and staff. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

Use of Technology—Some recipient/covered entities use their internet and/or intranet capabilities to store translated documents online. These documents can be retrieved as needed.

Telephone Information Lines—Recipient/covered entities have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers, in the non-English languages, on how to leave a recorded message that will be answered by someone who speaks the caller's language.

Signage and Other Outreach—Other recipient/covered entities have provided

information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations; (b) putting notices in newspapers, and on radio and television stations that serve LEP groups; (c) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; and (d) establishing information lines in appropriate languages.

E. Model Plan

The following is an example of a model language assistance program that is potentially useful for all recipient/covered entities, but is particularly appropriate for entities such as hospitals or social service agencies that serve a significant and diverse LEP population. This model plan incorporates a variety of options and methods for providing meaningful access to LEP beneficiaries:

- A formal written language assistance program;
- Identification and assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program through a review of census and client utilization data and data from school systems and community agencies and organizations;
- Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance;
- Use of ''I speak'' cards by intake workers and other patient contact personnel so that patients can identify their primary languages;
- Requiring intake workers to note the language of the LEP person in his/her record so that all staff can identify the language assistance needs of the client;
- Employment of a sufficient number of staff, bilingual in appropriate languages, in patient and client contact positions such as intake workers, caseworkers, nurses, doctors. These persons must be trained and competent as interpreters;
- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages, in a timely manner;
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line;
- Translation of application forms, instructional, informational and other key documents into appropriate non-English languages. Provision of oral interpreter assistance with documents, for those persons whose language does not exist in written form;
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons;
- Notice to and training of all staff, particularly patient and client contact staff, with respect to the recipient/covered entity's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
- Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff;
- Notice to the public regarding the language assistance policies and procedures, and notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters;
- Adoption of a procedure for the resolution of complaints regarding the provision of language assistance; and for notifying clients of their right to and how to file a complaint under Title VI with HHS.
- Appointment of a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

F. Compliance and Enforcement

The recommendations outlined above are not intended to be exhaustive. Recipient/covered entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting, and are not required to use all of the suggested methods and options listed. However, recipient/covered entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

OCR will enforce Title VI as it applies to recipient/covered entities' responsibilities to LEP persons through the procedures provided for in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that OCR will investigate whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, OCR will inform the recipient/covered entity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, OCR must inform the recipient/covered entity of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, OCR must secure compliance through (a) the termination of Federal assistance after the recipient/covered entity has been given an opportunity for an administrative hearing, (b) referral to DOJ for injunctive relief or other enforcement proceedings, or (c) any other means authorized by law.

As the Title VI regulations set forth above indicate, OCR has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. OCR will engage in voluntary compliance efforts, and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, OCR will propose reasonable timetables for achieving compliance and will consult with and assist recipient/covered entities in exploring cost effective ways of coming into compliance, by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipient/covered entities have addressed the language needs of diverse populations.

OCR will focus its compliance review efforts primarily on larger recipient/covered entities such as hospitals, managed care organizations, state agencies, and social service organizations, that have a significant number or percentage of LEP persons

eligible to be served, or likely to be directly affected, by the recipient/covered entity's program. Generally, it has been the experience of OCR that in order to ensure compliance with Title VI, these recipient/covered entities will be expected to utilize a wider range of the language assistance options outlined in section C. 3, above.

The fact that OCR is focusing its investigative resources on larger recipient/covered entities with significant numbers or percentages of LEP persons likely to be served or directly affected does not mean that other recipient/covered entities are relieved of their obligation under Title VI, or will not be subject to review by OCR. In fact, OCR has a legal obligation under HHS regulations to promptly investigate all complaints alleging a violation of Title VI. All recipient/covered entities must take steps to overcome language differences that result in barriers and provide the language assistance needed to ensure that LEP persons have meaningful access to services and benefits. However, smaller recipient/covered entities—such as sole practitioners, those with more limited resources, and recipient/covered entities who serve small numbers of LEP persons on an infrequent basis—will have more flexibility in meeting their obligations to ensure meaningful access for LEP persons.

In determining a recipient/covered entity's compliance with Title VI, OCR's primary concern is to ensure that the recipient/covered entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services and benefits. A recipient/covered entity's appropriate use of the methods and options discussed in this policy guidance will be viewed by OCR as evidence of a recipient/covered entity's willingness to comply voluntarily with its Title VI obligations.

G. Technical Assistance

Over the past 30 years, OCR has provided substantial technical assistance to recipient/covered entities, and will continue to be available to provide such assistance to any recipient/covered entity seeking to ensure that it operates an effective language assistance program. In addition, during its investigative process, OCR is available to provide technical assistance to enable recipient/covered entities to come into voluntary compliance.

H. Attachments

Appendix A is a summary, in question and answer format, of a number of the critical elements of this guidance. The purpose of the summary is to assist recipient/covered entities further in understanding this guidance and their obligations under Title VI to ensure meaningful access to LEP persons. Appendix B is a list of numerous provisions, including but not limited to Federal and state laws and regulations, requiring the provision of language assistance to LEP persons in various circumstances. This list is not exhaustive, and is not limited to the health and human service context.

Appendix A—Questions and Answers Regarding the Office for Civil Rights Policy Guidance on the Title VI Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency

1. Q. What is the purpose of the guidance on language access released by the Office for Civil Rights (OCR) of the U.S. Department of Health and Human Services (HHS)?

A. The purpose of the Policy Guidance is two-fold: First, to clarify the responsibilities of providers of health and social services who receive Federal financial assistance from HHS, and assist them in fulfilling their responsibilities to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964; and second, to clarify to members of the public that health and social service providers must ensure that LEP persons have meaningful access to their programs and services.

2. Q. What does the policy guidance do?

A. The policy guidance does the following:

- Reiterates the principles of Title VI with respect to LEP persons.
- Discusses the policies, procedures and other steps that recipients can take to ensure meaningful access to their program by LEP persons.
- Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI.
- Provides that OCR will determine compliance on a case by case basis, and that such assessments will take into account the size of the recipient, the size of the LEP population, the nature of the program, the resources available, and the frequency of use by LEP persons.
- Provides that small providers and recipient/covered entities with limited resources, will have a great deal of flexibility in achieving compliance.
- Provides that OCR will provide extensive technical assistance as needed by recipient/covered entities.

3. Q. Does the guidance impose new requirements on recipient/covered entities?

A. No. Since its enactment, Title VI of the Civil Rights Act of 1964 has prohibited discrimination on the basis of race, color or national origin in any program or activity that receives federal financial assistance. In order to avoid violating Title VI, recipient/covered entities must ensure that they provide LEP persons meaningful opportunity to participate in their programs, services and benefits. Over the past three decades, OCR has conducted thousands of investigations and reviews involving language differences that affect the access of LEP persons to medical care and social services. Where such language differences prevent meaningful access on the basis of national origin, the law requires that recipient/covered entities provide oral and written language assistance at no cost to the LEP person. This guidance synthesizes the legal requirements that have been on the books and that OCR has been enforcing for over three decades.

4. Q. Who is covered by the guidance?

A. Covered entities include any state or local agency, private institution or organization, or any public or private individual that (1) operates, provides or engages in health, or social service programs and activities, and (2) receives Federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs; state, county and local health agencies; state Medicaid agencies; state, county and local welfare agencies; programs for families, youth and children; Head Start programs; public and private contractors, subcontractors and vendors; physicians; and other providers who receive Federal financial assistance from HHS.

5. Q. How does the guidance affect small practitioners and providers?

A. The key to providing meaningful access for LEP persons is to ensure that the relevant circumstances of the LEP person's situation can be effectively communicated to the service provider and the LEP person is able to understand the services and benefits available and is able to receive those services and benefits for which he or she is eligible in a timely manner. Small practitioners and providers will have considerable flexibility in determining precisely how to fulfill their obligations to ensure meaningful access for persons with limited English proficiency. OCR will assess compliance on a case by case basis and will take into account the size of the recipient/covered entity, the size of the eligible LEP population it serves, the nature of the program or service, the objectives of the program, the total resources available to the recipient/covered entity, the frequency with which languages are encountered and the frequency with which LEP persons come into contact with the program. There is no ''one size fits all'' solution for Title VI compliance with respect to LEP persons.

In other words, OCR will focus on the end result, that is, whether the small practitioner or provider has taken steps, given the factors that will be considered by OCR, to ensure that the LEP persons have access to the programs and services provided by the physician. OCR will continue to be available to provide technical assistance to any physician seeking to ensure that s/he operates an effective language assistance program. For example: A physician, a sole

practitioner, has about 50 LEP Hispanic patients. He has a staff of two nurses and a receptionist, derives a modest income from his practice, and receives Medicaid funds. He asserts that he cannot afford to hire bilingual staff, contract with a professional interpreter service, or translate written documents. To accommodate the language needs of his LEP patients he has made arrangements with a Hispanic community organization for trained and competent volunteer interpreters and with a telephone interpreter language line, to interpret during consultations and to orally translate written documents. There have been no client complaints of inordinate delays or other service related problems with respect to LEP clients. Given the physician's resources, the size of his staff, and the size of the LEP population, OCR would find the physician in compliance with Title VI.

6. Q. The guidance identifies some specific circumstances under which OCR will consider a program to be in compliance with its obligation under Title VI to provide written materials in languages other than English. Does this mean that a recipient/covered entity will be considered out of compliance with Title VI if its program does not fall within these circumstances?

A. No. The circumstances outlined in the guidance are intended to provide a ''safe harbor'' for recipients who desire greater certainty with respect to their obligations to provide written translations. Thus, a recipient/covered entity whose policies and practices fall within these circumstances can be confident that, with respect to written translations, it will be found in compliance with Title VI. However, the failure to fall within the ''safe harbors'' outlined in the guidance does not necessarily mean that a recipient/covered entity is not in compliance with Title VI. In such circumstances, OCR will review the totality of circumstances to determine the precise nature of a recipient/covered entity's obligation to provide written materials in languages other than English. If translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of its program, or if there is an alternative means of ensuring that LEP persons have meaningful access to the information provided in the document (such as timely, effective oral interpretation of vital documents), OCR will likely not find the translation necessary for compliance with Title VI.

7. Q. The guidance makes reference to ''vital documents'' and notes that, in certain circumstances, a recipient/covered entity may have to translate such documents into other languages. What is a vital document?

A. Given the wide array of programs and activities receiving HHS financial assistance, we do not attempt to identify vital documents and information with specificity in each program area. Rather, a document or information should be considered vital if it contains information that is critical for accessing the federal fund recipient's services and/or benefits, or is required by law. Thus, vital documents include, but are not limited to, applications, consent forms, letters and notices pertaining to the reduction, denial or termination of services or benefits, letters or notices that require a response from the beneficiary or client, and documents that advise of free language assistance. OCR will also collaborate with respective HHS agencies in determining which documents and information are deemed to be vital within a particular program.

8. Q. Will recipient/covered entities have to translate large documents such as managed care enrollment handbooks?

A. Not necessarily. As part of its overall language assistance program, a recipient must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program, needs services or information in a language other than English to communicate effectively. OCR will assess the need for written translation of documents and vital information contained in larger documents on a case by case basis, taking into account all relevant circumstances, including the nature of the recipient/covered entity's services or benefits, the size of the recipient/covered entity, the number and size of the LEP language groups in its service area, the nature and length of the document, the objectives of the program, the total resources available to the recipient/covered entity, the frequency which particular languages are encountered and the frequency with which translated documents are needed and the cost of translation. Depending on these circumstances, large documents, such as enrollment handbooks, may not need to be translated or may not need to be translated in their entirety. For example, a recipient/covered entity may be required to provide written translations of vital information contained in larger documents, but may not have to translate the entire document, to meet its obligations under Title VI.

9. Q. May a recipient/covered entity require an LEP person to use a family member or a friend as his or her interpreter?

A. No. OCR's policy requires the recipient/covered entity to inform the LEP person of the right to receive free interpreter services first and permits the use of family and friends only after such offer of assistance has been declined and documented. Our policy regarding the use of family and friends as interpreters is based on over three decades of experience with Title VI. Although OCR recognizes that some individuals may be uncomfortable having a stranger serve as an interpreter, especially when the situation involves the discussion of very personal or private matters, it is our experience that family and friends frequently are not competent to act as interpreters, since they may be insufficiently proficient in both languages, untrained and unskilled as interpreters, and unfamiliar with specialized terminology. Use of such persons also may result in breaches of confidentiality or reluctance on the part of the individual to reveal personal information critical to their situations. These concerns are even more pronounced when the family member called upon to interpret is a minor. In other words, when family and friends are used, there is a grave risk that interpretation may not be accurate or complete. In medical settings, in particular, this can result in serious, even life threatening consequences.

10. Q. How does low health literacy, non-literacy, non-written languages, blindness and deafness among LEP populations affect the responsibilities of federal fund recipients?

A. Effective communication in any language requires an understanding of the literacy levels of the eligible populations. However, literacy generally is a program operations issue rather than a Title VI issue. Where a LEP individual has a limited understanding of health matters or cannot read, access to the program is complicated by factors not directly related to national origin or language. Under these circumstances, a recipient/covered entity should provide remedial health information to the same extent that it would provide such information to English-speakers. Similarly, a recipient/covered entity should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the recipient to communicate the vital information contained in the document or to provide notice of the availability of oral translation. Section 504 of the Rehabilitation Act of 1973 requires that federal fund recipients provide sign language and oral interpreters for people who have hearing impairments and provide materials in alternative formats such as in large print, braille or on tape for individuals with impairments. The Americans with Disabilities Act imposes similar requirements on health and human service providers.

11. Q. Can OCR provide help to recipient/covered entities who wish to come into compliance with Title VI?

A. Absolutely. For over three decades, OCR has provided substantial technical assistance to recipient/covered entities who are seeking to ensure that LEP persons can meaningfully access their programs or services. Our regional staff is prepared to work with recipients to help them meet their obligations under Title VI. As part of its technical assistance services, OCR can help identify best practices and successful strategies used by other federal fund recipients, identify sources of federal reimbursement for translation services, and point providers to other resources.

12. Q. How will OCR enforce compliance by recipient/covered entities with the LEP requirements of Title VI?

A. OCR will enforce Title VI as it applies to recipient/covered entities through the procedures provided for in the Title VI regulations. The Title VI regulations provide that OCR will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, OCR will inform the recipient/covered entity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, OCR must inform the recipient/covered entity of the noncompliance through a Letter of Findings

that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. By regulation, OCR must attempt to secure voluntary compliance through informal means. In practice, OCR has been quite successful in securing voluntary compliance and will continue these efforts. If the matter cannot be resolved informally, OCR must secure compliance through (a) the termination of Federal assistance after the recipient/covered entity has been given an opportunity for an administrative hearing, (b) referral to DOJ for injunctive relief or other enforcement proceedings, or (c) any other means authorized by law.

13. Q. Does issuing this guidance mean that OCR will be changing how it enforces compliance with Title VI?

A. No. How OCR enforces Title VI is governed by the Title VI implementing regulations. The methods and procedures used to investigate and resolve complaints, and conduct compliance reviews, have not changed.

14. Q. What is HHS doing to ensure it is following the guidance it is giving to States and others?

A. Although legally, federally conducted programs and activities are not subject to Title VI, HHS recognizes the importance of ensuring that its programs and services are accessible to LEP persons. To this end, HHS has established a working group to assess how HHS itself is providing language access. Currently, agencies across HHS have taken a number of important steps to ensure that their programs and services are accessible to LEP persons. For example, a number of agencies have translated important consumer materials into languages other than English. Also, several agencies have launched Spanish language web sites. In order to ensure that all HHS federally conducted programs and activities are accessible to LEP persons, the Secretary has directed the working group to develop and implement a Department-wide plan for ensuring LEP persons meaningful access to HHS programs. This internal HHS initiative was begun prior to the President's August 11, 2000, Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency''. The Executive Order requires Federal Agencies to develop and implement a system for ensuring LEP persons meaningful access to their federally-conducted programs. It also requires agencies to issue guidance to their recipients on the recipients' obligations to provide LEP persons meaningful access to their federally-assisted programs. HHS is a step ahead on each of the obligations outlined in the Executive Order.

Appendix B—Selected Federal and State Laws and Regulations Requiring Language Assistance

Federal Laws and Regulations

Federal laws that recognize the need for language assistance include:

1. The Voting Rights Act, which bans English-only elections and prescribes other remedial devices to ensure nondiscrimination against language minorities; [1]

2. The Food Stamp Act of 1977, which requires states to provide written and oral language assistance to LEP persons under certain circumstances; [2]

3. Judicial procedure laws that require the use of certified or otherwise qualified interpreters for LEP parties and witnesses, at the government's expense, in certain proceedings; [3]

4. The Older Americans Act, which requires state planning agencies to use outreach workers who are fluent in the languages of older LEP persons, where there is a substantial number of such persons in a planning area; [4]

5. The Substance Abuse and Mental Health Administration Reorganization Act, which requires services provided with funds under the statute to be bilingual if appropriate; [5]

6. The Disadvantaged Minority Health Improvement Act, which requires the Office of Minority Health (OMH) to enter into contracts to increase the access of LEP persons to health care by developing programs to provide bilingual or interpreter services; [6]

7. The Equal Educational Opportunities Act of 1974, which requires educational agencies to take appropriate action to accommodate the language differences that impede equal participation by students in instructional programs; [7] and

8. Regulations issued by the Health Care Financing Administration (HCFA) which require that evaluations for the mentally ill and mentally retarded be adapted to the cultural background, language, ethnic origin and means of communication of the person being evaluated.[8]

State Laws and Regulations

Many states have recognized the seriousness of the language access challenge and have enacted laws that require providers to offer language assistance to LEP persons in many service settings.[9] States that require language assistance include:

1. California, which provides that intermediate care facilities must use interpreters and other methods to ensure adequate communication between staff and patients; [10]

2. New Jersey, which provides that drug and alcohol treatment facilities must provide interpreter services if their patient population in non-English speaking; [11]

3. Pennsylvania, which provides that a patient who does not speak English should have access, where possible, to an interpreter; [12] and

4. Massachusetts, which in April 2000, enacted legislation that requires every acute care hospital to provide competent interpreter services to LEP patients in connection with all emergency room services.[13]

Medical Accreditation Organizations

1. The Joint Committee on Accreditation of Healthcare Organizations (JCAHO), which accredits hospitals and other health care institutions, requires language assistance in a number of situations. For example, its accreditation manual for hospitals provides that written notice of patients' rights must be appropriate to the patient's age, understanding and language.[14]

2. The National Committee for Quality Assurance (NCQA), which provides accreditation for managed care organizations, also requires language assistance in a variety of settings. As part of its evaluation process, the NCQA assesses managed care member materials to determine whether they are available in languages, other than English, spoken by major population groups.[15]

[FR Doc. 00–22140 Filed 8–29–00; 8:45 am]

BILLING CODE 4110–60–P

[1] 42 U.S.C. Section 1973b(f)(1).

[2] 7 U.S.C. Section 2020(e)(1) and (2)(A).

[3] 28 U.S.C. Section 1827(d)(1)(A).

[4] 42 U.S.C. Section 3027(a)(20)(A).

[5] 42 U.S.C. Section 290aa(d)(14).

[6] 42 U.S.C. Section 300u–6(b)(7).

[7] 20 U.S.C. Section 1703(f).

[8] 42 CFR section 483.128(b).

[9] At least twenty six (26) states and the District of Columbia have enacted legislation requiring language assistance, such as interpreters and/or translated forms and other written materials, for LEP persons.

[10] 22 California Code of Regulations, Section 73501. California has a wide array of other laws and regulations that require language assistance, including those that require: (a) intermediate nursing facilities to use interpreters and other methods to ensure adequate communication with patients, (b) adult day care centers to employ ethnic and linguistic staff as indicated by participant characteristics, (c) certified interpreters for non-English speaking persons at administrative hearings, and (d) health licensing agencies to translate patients rights information into every language spoken by 1% or more of the nursing home population.

[11] New Jersey Administrative Code Section 42A–6.7.

[12] 28 Pennsylvania Administrative Code Section 103.22(b)(14).

[13] M.G.L.A. 111, Section 25J

[14] JCAHO, 1997 Accreditation Manual for Hospitals, Section R1.1.4.

[15] NCQA, 1997 Accreditation Standards, RR 6.2.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Procedures for Requests to use Child Care and Development Funds for Construction or Major Renovation of Child Care Facilities.

OMB No.: 0970–0160.

Description: The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and

Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update and clarify the original procedures that were issued in August 1997. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number or responses per respondent	Average burden hours per response	Total burden hours
Construction and Renovation	25	1	20	500
Estimated Total Annual Burden Hours				500

Additional Information: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Infant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for ACF.

Dated: August 25, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 22148 Filed 8–29–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonprescription 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: Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 19, 2000, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Ave., Gaithersburg, MD.

Contact Person: Sandra L. Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider safety issues regarding the use of Phenylpropanolamine (PPA) in over-the-counter (OTC) drug products. The discussion will focus on the reported results of an epidemiological study designed to assess the risk of hemorrhagic stroke associated with the use of PPA. The Consumer Health Products Association (CHPA) commissioned the study which was conducted by Yale University. The material which the committee will review will be available at least 1 business day before the meeting at: http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. Click on the year 2000 and then locate the Nonprescription Drugs Advisory Committee meeting for October 20, 2000.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 9, 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 October 9, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 21, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–22141 Filed 8–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the 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 Committees: Nonprescription Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee.

General Function of the Committees: To provide advice and

recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 20, 2000, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Ave., Gaithersburg, MD.

Contact Person: Sandra L. Titus or Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: Perezt@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committees will consider new drug application (NDA) 21–229 proposing over-the-counter (OTC) use of Prilosec® (omeprazole), Astra-Zeneca with distribution by Procter and Gamble. This is proposed to: (1) Relieve heartburn, acid indigestion and sour stomach, and (2) prevent heartburn, acid indigestion, and sour stomach brought on by consuming food and beverages, or associated with events such as stress, hectic lifestyle, lying down, or exercise.

The background material that the committees will review will be available 1 business day before the meeting on the Internet at: http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. Click on the year 2000 and then locate the Nonprescription Drugs Advisory Committee meeting for October 20, 2000.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 9, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. on October 20, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 9, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 21, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–22144 Filed 8–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1424]

Draft Guidance for Industry on Analytical Procedures and Methods Validation: Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Analytical Procedures and Methods Validation: Chemistry, Manufacturing, and Controls Documentation.'' This draft guidance is intended to provide recommendations to applicants on submitting analytical procedures, validation data, and samples to support the identity, strength, quality, purity, and potency of drug substances and drug products. The recommendations apply to drug substances and drug products covered in new drug applications (NDA's), abbreviated new drug applications (ANDA's), biologics license applications (BLA's), product license applications (PLA's), and supplements to these applications.

DATES: Submit written comments on the draft guidance by November 28, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1488, FAX 888–CBERFAX or 301–827–3844. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. To expedite FDA review of your comments to the docket on this draft guidance, CDER requests that, if possible, you also send an electronic copy of these comments by e-mail to cunninghamp@cder.fda.gov.

FOR FURTHER INFORMATION CONTACT:

Radhika Rajagopalan, Center for Drug Evaluation and Research (HFD–645), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5849, or

Alfred Del Grosso, Center for Biologics Evaluation and Research (HFM–250), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–435–4988.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Analytical Procedures and Methods Validation: Chemistry, Manufacturing, and Controls Documentation.'' This draft guidance is intended to assist applicants in assembling information, submitting samples, and presenting data to support analytical methodologies. The recommendations apply to drug substances and drug products covered in NDA's, ANDA's, BLA's, PLA's, and supplements to these applications. The principles also apply to drug substances and drug products covered in Type II drug master files.

The principles of methods validation described in this guidance apply to all types of analytical procedures; however, the specific recommendations in this guidance may not be applicable to certain analytical procedures unique to products such as biological, biotechnological, botanical, or radiopharmaceutical drugs.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on analytical procedures and methods validation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the draft guidance by November 28, 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. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm.

Dated: August 18, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–22143 Filed 8–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456—N–11]

Privacy Act of 1974—Proposed Amendment to a System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the re-designation of an existing system of records and proposed amendments to the system of records.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of Housing and Urban Development is re-designating HUD/PIH–1, ''Tenant Eligibility Verification Files,'' previously published on February 9, 1999 (64 FR 6371); to the new designation HUD/REAC–1, ''Tenant Eligibility Verification Files.'' The system of records notice below supersedes the system of records notice published on, February 9, 1999 (64 FR 6371). HUD/REAC–1 contains the same provisions as HUD/PIH–1 except for the following substantive changes: (1) The re-designation of the system of records to HUD/REAC–1 recognizes the transfer of responsibilities for the computer matching program from the Office of Public and Indian Housing to the Real Estate Assessment Center (REAC); and (2) HUD/REAC–1 expands the type of files to include: (a) Automated records used by housing agencies, owners and agents when providing HUD with information on actions taken to resolve income differences noted by computer matching, and (b) encrypted read-only files REAC employees may use while at housing agency, owner or agent sites containing SSA and IRS information subject to the disclosure provisions of 26 U.S.C. 6103. Aggregated statistics on the initial computer matching results and actions taken to resolve income differences may be made available to internal HUD Program Offices and HUD-contracted Contract Administrators.

HUD/REAC–1 contains computer matching and other tenant eligibility verification records necessary to support the identification of tenants who have been or may be obtaining inappropriate (excessive or insufficient) rental assistance. The system of records also supports disclosure of information, other than Federal tax return information, concerning those tenants to entities that administer HUD rental assistance programs and to law enforcement agencies for possible administrative or legal actions, as appropriate. Entities that administer HUD rental assistance programs are: housing agencies, Indian Tribes and Tribally Designated Housing Entities participating in the Section 8 Program, owners of subsidized multifamily projects, and management agents (hereinafter referred to collectively as ''POAs''); under certain limited circumstances, such as when HUD declares a Public Housing Authority in breach of an annual contributions contract, HUD itself may act as a POA. Additionally, HUD/REAC–1 provides information needed to evaluate actions taken to resolve income discrepancies affecting rental assistance.

DATES: *Effective Date:* This proposal shall become effective without further notice on September 29, 2000 unless comments are received during or before this period which would result in a contrary determination.

Comments Due By: September 29, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374, concerning Privacy Act matters. Regarding records maintained in Washington, DC; Chicago, Illinois; and Seattle, Washington contact the following, respectively: David L. Decker, Project Manager, Tenant Assessment Sub-System, REAC, Telephone Number (202) 708–4932, extension 3214; William Siska, Director, Chicago Technical Assistance Center, Telephone Number (312) 353–6236, extension 2084; and Gordon Brandhagen, Director, Seattle Technical Assistance Center, Telephone Number (206) 220–5312. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: HUD published a notice on September 14, 1999 (64 FR 49817) of its plan for large-scale implementation of its existing computer matching program concerning tenant data in assisted housing programs. During the second and third quarter of Fiscal Year 2000 HUD began sending letters containing SSA and IRS return information to tenants, and notices of potential income discrepancies to housing agencies, owners and agents based on its large-scale matching initiative.

A report of the Department's intention to establish the system has been submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: August 22, 2000.

Gloria R. Parker,

Chief Information Officer.

HUD/REAC–1

SYSTEM NAME:

Tenant Eligibility Verification Files.

SYSTEM LOCATIONS:

The files will be maintained at the following locations: (1) U. S. Department of Housing and Urban Development, Real Estate Assessment Center, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024–2635; (2) Chicago Technical Assistance Center, U.S. Department of Housing & Urban Development, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604; (3) Seattle Technical Assistance Center, U.S. Department of Housing & Urban Development, Seattle Federal Building, 909 First Avenue, Seattle, Washington 98104. Controls will be established at 1280 Maryland Avenue, SW, for any encrypted files containing SSA and IRS return information (subject to the

provisions of 26 U.S.C. 6103) that are created and used by REAC employees who will travel to the sites of housing agencies, owners and management agents.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tenants receiving rental assistance provided by programs administered by the Department of Housing and Urban Development, state agencies, and POAs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of: (1) Automated tenant data obtained from HUD/H–11, Tenant Housing Assistance and Contract Verification Data, published at 62 FR 11909; March 13, 1997, [two HUD automated systems—the Multifamily Tenant Certification System and the Tenant Rental Assistance Certification System—are the primary components of HUD/H–11]; (2) automated tenant data provided by POAs [generally these records are available in HUD/H–11]; (3) information obtained from computer matching with automated earned income data that the Social Security Administration (SSA) provides under 26 U.S.C. 6103(l)(7)(A) from the Earnings Recording and Self-Employment Income System (HHS/SSA/OSR, 09–60–0059) (Earnings Record) and Master Beneficiary Record (HHS/SSA/OSR, 09–60–0090); (4) information obtained from computer matching with automated unearned income data that the Internal Revenue Service (IRS) provides to HUD under 26 U.S.C. 6103(l)(7)(B) from Treasury/IRS 22.061, Wage and Information Returns Processing (IRP) File Treasury/IRS; (5) information obtained from computer matching with automated Title II (social security) and Title XVI (supplemental security income) data that the SSA provides to HUD under a routine use from the Supplemental Security Income Record, HHS/SSA/OSR 90–60–0103; (6) information obtained from computer matching with wage and unemployment compensation data from State wage information collection agencies; (7) information obtained from computer matching with automated data from the Office of Personnel Management's General Personnel Records (OPM/GOVT–1), and the Civil Service Retirement and Insurance Records System (OPM/Central-1) pursuant to a routine use; (8) information obtained from computer matching with automated data from the Department of Defense's Defense Manpower Data Center Data Base (S322.10.DMDC) pursuant to a routine use; (9) information obtained from computer matching with automated records from the SSA's Master Files of Social Security Number Holders, known as the Enumeration Verification System (HHS/SSA/OSR, 09–60–0058) pursuant to a routine use; (10) applications for rental assistance and other related documentation obtained from tenant case files maintained by POAs; (11) data received from employers confirming income or deductions supporting determinations of eligibility for, and the amount of, rental assistance benefits; (12) automated records provided by other Federal agencies under the investigative exclusion of the Computer Matching and Privacy Protection Act of 1988; (13) automated records provided by POAs regarding actions taken on computer matching results; (14) automated records created by the REAC for use by POAs in recording the actions taken to resolve income differences noted by the computer matching and (15) correspondence or other documents received from tenants concerning potential income discrepancies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code 26 U.S.C. 6103(l)(7)(D), permits HUD to request from the Commissioner of the SSA and the Secretary of the Treasury, SSA and IRS earned and unearned income information, respectively, needed to verify the incomes of tenants who receive rental assistance. Section 6103(l)(7)(D) precludes HUD from redisclosing that information to entities that administer HUD programs (i.e. POAs). Section 542(b) of HUD's 1998 Appropriations Act (Pub. L. 105–65; October 27, 1997) eliminated a September 30, 1998 sunset provision to 26 U.S.C. 6103(l)(7)(D), effectively making permanent the authority for SSA and IRS disclosures of return information to HUD.

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988, 42 U.S.C. 3544, as amended, allows HUD to notify POAs that discrepancies exist between the tenant-reported incomes and income obtained from independent income sources, i.e., the SSA or the IRS. The McKinney Amendments of 1988 also authorized HUD to request, under section 303(i) of the Social Security Act, wage and claim information from state agencies responsible for the administration of state unemployment law. Section 542(a)(1) of HUD's 1998 Appropriation Act, referenced above, eliminated an October 1, 1994, sunset provision to section 303(i) of the Social Security Act, effectively making permanent the authority requiring state agencies to disclose wage and claim information to HUD and public housing agencies.

Section 165 of the Housing and Community Development Act of 1987, Public Law 100–242; authorizes HUD to require applicants and participants in HUD-administered programs involving rental assistance to disclose to HUD their social security numbers as a condition of initial or continuing eligibility for participation. Subpart T of 24 CFR part 200 applies this requirement to member of households six (6) years of age and older.

Applicable laws concerning HUD's assisted housing programs include: the United States Housing Act of 1937, 42 U.S.C. 1437 note; and section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s, and the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4101, *et seq.*

PURPOSE(S):

The primary purposes of HUD/REAC–1 are to aid HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the availability of rental assistance to individuals who meet the requirements of Federal rental assistance programs, (b) detecting abuses in assisted housing programs, (c) taking administrative or legal actions to resolve past abuses of assisted housing programs, (d) deterring abuses, and (e) evaluating the effectiveness of income discrepancy resolution actions taken by public housing agencies, owners and agents for HUD's rental assistance programs. HUD/REAC–1 serves as a repository for automated information used in and resulting from computer matching of tenant data for recipients of Federal rental assistance to other data sources; HUD/REAC–1 also contains non-automated information used in and resulting from verifying computer matching results and in accomplishing the purposes previously cited. Records in this system are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

For all routine uses, return information obtained from the Internal Revenue Service under 26 U.S.C. 6103(l)(7) may only be disclosed as provided by 26 U.S.C. 6103.

1. Records included in the system may be used in conducting computer matching with Federal and State agencies to aid in the identification of tenants who have received inappropriate (excessive or insufficient) rental housing assistance.

2. Records that HUD obtains from the SSA and the IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed only as permitted under 26 U.S.C. 6103, which limits disclosure to the tenant/taxpayer, and to HUD employees whose duties require access for the purpose for which the disclosure to HUD was made.

3. Records other than return information obtained from the SSA and IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed to the appropriate Federal, state or local agency charged with the responsibility for investigating or prosecuting a violation of law, whether criminal, civil or regulatory in nature, or enforcing or implementing a statute, rule or regulation.

4. Records other than return information obtained from the SSA and IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

5. Records other than return information obtained from the SSA and IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed to POAs in order to assist them in determining tenants' eligibility for rental assistance, and the amount of that assistance and to facilitate recovery of money or property or other administrative actions (*e.g.,* eviction), necessary to promote the integrity of programs.

6. Records other than return information obtained from the SSA and the IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed during the course of an administrative proceeding where HUD or POAs are a party to the litigation and disclosure is relevant and reasonably necessary to adjudicate the matter.

7. Records other than return information obtained from the SSA and the IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

8. Records other than return information obtained from the SSA and the IRS under the authority of 26 U.S.C. 6103(l)(7), may be disclosed to a Federal agency to initiate Federal salary or annuity offsets as necessary to collect excessive rental assistance received by the tenant.

9. Records other than return information obtained from the SSA and the IRS under the authority of 26 U.S.C. 6103(l)(7), concerning an individual's receipt of excessive rental assistance, including the individual's actions to repay the same, may be disclosed to the Federal agency that employs such individual, for the purpose of notifying the employer of potential violation of the Standards of Ethical Conduct for Employees of the Executive Branch.

10. Records other than return information obtained from the SSA and IRS under the authority of 26 U.S.C. 6103(l)(7), may be used to provide aggregate information on POAs' resolution efforts to Contract Administrators and internal HUD Offices for use in their mandated oversight responsibilities to ensure that POAs are providing appropriate rental assistance to eligible families and are resolving discrepancies identified by HUD.

11. Records may be used to provide statistical information to Congress and the Office of Management and Budget for use in evaluating: the effectiveness of computer matching and income verification programs; program policies; and actions taken by entities that administer HUD's rental assistance programs to resolve income discrepancies identified through computer matching.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in tenant case files and electronically in office automation equipment. Records other than return information obtained from the SSA and the IRS under the authority of 26 U.S.C. 6103(l)(7), may also be stored on mainframe computer facilities or computer servers for public housing agencies', owners' and agents' access via the Internet to: (1) Obtain social security and supplemental security income data that is not subject to provisions of 26 U.S.C. 6103, and (2) update actions taken in resolving income discrepancies. Records containing data subject to provisions of 26 U.S.C. 6103 may be stored in encrypted form on laptop computers that are taken to the sites of public housing agencies, owners and agents that administer HUD's rental assistance programs. Software precludes the transfer of any data subject to 26 U.S.C. 6103 to unencrypted media.

RETRIEVABILITY:

Records may be retrieved by manual or computer search of indices by the name, social security number, or POA.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises with access limited to those persons whose official duties require access. Computer files and printed listings are maintained in locked cabinets. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access. HUD will safeguard the SSA and the IRS return information obtained pursuant to 26 U.S.C. 6103(l)(7)(A) and (B) in accordance with 26 U.S.C. 6103(p)(4) and the IRS's ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' Publication 1075 (REV. 3/99).

RETENTION AND DISPOSAL:

Only those computer files and printouts created from the computer matching that meet predetermined criteria are maintained. These records will be destroyed as soon as they have served the matching program's purpose. All other records will be destroyed as soon as possible within 1 year. Paper listings containing personal identifiers will be shredded. Computer source files provided by other organizations will be returned to those organizations or destroyed in accordance with computer matching agreements.

Information obtained through computer matching and tenant case file reviews will be destroyed as soon as follow-up processing of this information is completed, unless the information is required for evidentiary reasons or needed by POAs for use in program eligibility determinations. When needed for evidentiary documentation, the information will be referred to the HUD Office of Inspector General (OIG) or other appropriate Federal, state or local agencies charged with the responsibility for investigating or prosecuting such violations. When referred to the HUD OIG the information then becomes a part of the Investigative Files of the Office of Inspector General, HUD/OIG–1.

SYSTEM MANAGER(S) AND ADDRESS:

Project Manager, Technical Assessment Sub-System, Real Estate Assessment Center, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024–2135.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to such records, should address inquiries to the Project Manager, Technical Assessment Sub-System, Real Estate Assessment Center, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024–2635.

Written requests should contain the full name, Social Security Number, date of birth, current address and telephone number of the individual.

For personal visits, the individual must be able to provide some acceptable identification, such as a driver's license or other identification card.

CONTESTING RECORD PROCEDURES:

The procedures for amendment or correction of records, and for appealing initial agency determinations, appear in 24 CFR part 16.

RECORD SOURCE CATEGORIES:

The REAC receives automated tenant data from the Assistant Secretary for Public and Indian Housing and the Assistant Secretary for Housing. The Assistant Secretaries collect information from a variety of sources, including POAs. The REAC receives data from POAs concerning actions taken to resolve income differences noted by HUD. Additionally, the REAC also receives data from other Federal and state agencies, law enforcement agencies, program participants, complainants, and other non-governmental sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

To the extent that information in this system of records falls within the coverage of subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), the system is exempt from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act. To the extent that information in this system of records falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of subsection (d)(1) of the Privacy Act. See 24 CFR 16.15 (c) and (d).

[FR Doc. 00–22182 Filed 8–29–00; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, September 22, 2000 Time 1:30 p.m. to 4:30 p.m.

Address: Tinicum Park, 921 River Road, Erwinna, PA 18920.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corrdior and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1988.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: August 24, 2000.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 00–22117 Filed 8–29–00; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1220–DH]

Notice of Availability of Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for a Proposed Plan Amendment to the Pony Express Resource Management Plan (RMP)

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Salt Lake Field Office, Utah announces the availability of an EA/FONSI for a plan amendment to the Pony Express RMP. On February 3, 1997, as amended on August 10, 1999, the Salt Lake Field Office published in the **Federal Register** a notice of intent to conduct a plan amendment to the RMP.

Under the Bureau Planning System, Special Recreation Management Areas (SRMA) are designated where significant public recreation issues or management concerns occur. Special or more intensive types of management are typically needed. Detailed activity planning, including recreation, is required in these areas and greater managerial investment is likely. This amendment will accomplish two main objectives: One, designate Fivemile Pass a SRMA, to facilitate the planning process to address recreation use and management issues, needs, and priorities; and two, establish Off-Road Vehicle designations. Designation of a SRMA initiates the activity level planning process, including the development of an activity plan. This activity plan will be developed as a Coordinated Resource Management Plan and address site specific recreation development, maintenance, and operational details such as specific route identification, camping areas, staging areas, facilities (loading ramps, outhouses, weed spray stations, etc.), special stipulations for organized events, use limits, and specific regulations for the area as well as site specific management prescriptions for other resources in the area. The SRMA would be managed primarily for recreational uses, but would remain a multiple-use management area. The existing RMP would be updated for all uses incorporating changes in land use patterns.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of

publication of this notice. Protests must be submitted on or before September 29, 2000.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn.: Brenda Williams, Resource Planning Team, 1849 C Street, NW, Washington, D.C. 20240, within 30 days after the date of publication of this notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: For information on the BLM plan amendment contact Britta Laub, Outdoor Recreation Planner, telephone (801) 977–4389. Existing planning documents and information are available at the above Utah BLM Salt Lake Field Office address.

SUPPLEMENTARY INFORMATION: Any person who participated in the planning process and has an interest which is or may be adversely affected by the Proposed Plan Amendment may protest to the Director of the Bureau of Land Management. The protest must be in writing and filed within 30 days of the date of publication of this Notice of Availability in the **Federal Register**. The protest must be specific and contain the following information:

—The name, mailing address, telephone number and interest of the person filing the protest;
—A statement of the issue(s) being protested;
—A statement of the part(s) of the proposed amendment being protested;
—A copy of all documents addressing the issue(s) that were submitted by the protestor during the planning process; and
—A concise statement explaining why the BLM State Director's proposed decision is believed to be in error.

In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Bob Bennett,

Acting State Director.

[FR Doc. 00–22287 Filed 8–29–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–00–1820–PG–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: The meeting location for the Northwest Colorado Resource Advisory Council Meeting published in the **Federal Register** on August 10, 2000 has been changed.

CORRECTION: In the **Federal Register** of August 10, 2000, Volume 65, Number 155, FR Doc. 00–20239, page 49010, correct the ''Summary'' to read: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Wednesday, September 20, 2000, at the Center of Craig, 601 Yampa Avenue, Room 112, Craig, Colorado. Correct the first paragraph, first sentence of the ''Supplementary Information'' to read: The Northwest Resource Advisory Council (RAC) will meet on Wednesday, September 20, 2000, at the Center of Craig, 601 Yampa Avenue, Room 112, Craig, Colorado.

Dated: August 24, 2000.

Richard Arcand,

Acting Center Manager, Northwest Center.

[FR Doc. 00–22120 Filed 8–29–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–00–1310–AC]

Notice of Intent To (1) Prepare a Revision to the Farmington Resource management Plan and (2) Prepare an Amendment (Oil and Gas) to the Rio Puerco Resource Management Plan. Call for Coal Information and Invitation To Participate in Identification of Issues and Planning Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and call for coal information.

SUMMARY: The Bureau of Land Management (BLM), Farmington Field Office, New Mexico, is initiating the preparation of a Resource Management Plan Revision (RMP Revision) and Amendment which will include an Environmental Impact Statement (EIS). The RMP Revision will establish land use management policy for multiple resource uses on approximately 1.5 million acres of public land and 2.26 million acres of federal mineral resources in the Farmington Field Office. The RMP will estimate reasonable foreseeable development (RFD) of federal oil and gas mineral resources in the San Juan Basin portions of the Albuquerque and Farmington Field Offices. The Code of Federal Regulations, Title 43, Subpart 1600, will be followed for this planning effort. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria for the RMP Revision.

This notice also solicits coal resource information for federal minerals located adjacent to existing mines pursuant to 43 CFR 3420.1–2 for inclusion in the RMP Revision. Coal companies, state and local governments, and the general public is encouraged to submit information to the BLM to assist in the determinations of coal development potential and possible conflicts with other resources. If this information is determined to indicate development potential, further considerations for leasing will be given.

DATES: Comments relating to the identification of issues, planning criteria and information submitted for the Call for Coal Information will be accepted until October 16, 2000.

ADDRESSES: Send comments to: BLM, Farmington Field Office, RMP Revision, 1235 La Plata Highway, Suite A, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Steve Henke, Project Manager, Albuquerque Field Office, NM, (505) 761–8935.

SUPPLEMENTARY INFORMATION: The planning area will include the public land (Farmington Field Office) and federal mineral ownership (Albuquerque and Farmington Field Offices) in all or part of McKinley, Rio Arriba, San Juan, and Sandoval Counties. This encompasses approximately 1.5 million acres of BLM-administered surface and 2.26 million acres of federal minerals under federal, state, or private surface in the four-county area in the Farmington Field Office. The planning area also includes the federal minerals located in the San Juan Basin portion of the Albuquerque Field Office (McKinley, Rio Arriba, and Sandoval Counties).

Anticipated issues to be addressed during development of the RMP Revision include, but are not limited to, the following: (1) Which public lands could be transferred to other than BLM-administration and which lands would be beneficial to BLM programs if acquired; (2) which public lands should be designated as open, restricted or closed to motorized vehicle access; (3) which public lands will be considered for special management designation; (4) which federal minerals should be closed to leasing or designated as open to oil and gas development under (a) standard terms and conditions, (b) timing limitations (seasonal) constraints, (c) controlled surface use constraints, or (d) no surface occupancy constraints; and

(5) ecosystem function. These preliminary issues are not final and may be further refined by direct input through active public participation. The only program element within the Albuquerque Field Office, that will be addressed during development of the RMP Amendment, is projected oil and gas development in the Albuquerque Field Office for the next 20 years.

Four criteria are proposed to guide the resolution of the issues that will be considered in the RMP Revision.

1. Actions must comply with laws, regulations, and executive orders.

2. Actions must be reasonable and achievable.

3. Actions will be considered for their long-term benefits to the public in relation to short-term benefits.

4. Actions will be considered in an interdisciplinary approach.

Industry and other interested parties are asked to provide any information for areas adjacent to existing mines that will be useful in meeting the requirements of the Federal Coal Management Program defined in 43 CFR part 3420, including application of the coal planning screens and possible future activity planning such as tract delineation, ranking and selection. Information resulting from this call will be used to determine potential for coal development and the likelihood of conflict with other resources.

The issue of federal coal leasing and development will include:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations;

2. Determining areas acceptable for consideration with special stipulations;

3. Determining areas unacceptable for further coal leasing consideration.

The BLM will apply the coal development, unsuitability criteria, multiple use conflict and consultation screens in order to make these determinations.

The type of information needed includes, but is not limited to, the following:

1. Location:

a. Federal coal tracts desired by mining companies should include a narrative description with areas delineated on a map with a scale of not less than ½ inch to the mile.

b. Descriptions of both public and private industry coal users in the general region.

2. Quantity needs (tonnage, dates) for both public and private industry coal users and coal developers.

3. Quality needs (by type and grade) for end users of the coal.

4. Coal reserve drilling data which may pertain to the planning area.

5. Information relating to surface and mineral ownership.

a. Surface owner consents previously granted, whether consent is transferable, surface owner leases with coal companies.

b. Non-federal, or fee coal ownership adjacent to federal tracts currently leased or mined.

6. Other resource values occurring within the planning area which may conflict with coal development:

a. Describe the resource value and locate it on a map with a scale of not less than ½ inch to the mile.

b. State the reasons the particular resource would conflict with coal development. Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call for information. A public participation plan is being prepared. It is intended to involve interested or affected parties early and continuously throughout the planning process. The public participation plan will emphasize localized one-to-one contacts, media coverage, direct mailings, and continual coordination and collaboration. Meetings will be held to (1) determine the scope of the RMP Revision and Amendment and (2) obtain input on issues and planning criteria. The meetings will be held in Cuba, Crownpoint, and Farmington, New Mexico at the following times and locations.

September 26, 2000, 7 p.m., Cuba, Senior Citizen Center

September 27, 2000, 7 p.m. Crownpoint, Chapter House

September 28, 2000, 7 p.m., Farmington, Civic Center

Complete records of all phases of the planning process will be available for public review at the Farmington Field Office throughout development of the RMP Revision and Amendment. It is estimated it will take approximately 18 months to complete the Proposed RMP Revision and Amendment. Alternatives will be developed and analyzed to resolve the issues addressed in the document. A Draft RMP Revision and Amendment and Draft EIS will be published and made available for a 90-day comment period. Comments made on the Draft RMP Revision and Amendment and Draft EIS will be addressed in a Proposed RMP Revision and Amendment and Final EIS. There will be a 30-day protest period on the Proposed RMP Revision and Amendment for individuals who participated in the planning process.

Dated: August 21, 2000.

M.J. Chavez,

State Director.

[FR Doc. 00–22119 Filed 8–29–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4041] ES–50776, Group 94, Arkansas

Notice of Filing of Plat of Survey; Arkansas

The plat of the corrective dependent resurvey of a portion of the east boundary, a portion of the south boundary, a portion of the subdivisional lines, and the corrective survey of the subdivision of certain sections in Township 15 North, Range 23 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia, at 7:30 a.m., on October 2, 2000.

The survey was requested by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 2, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: August 16, 2000.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–22116 Filed 8–29–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Its Value Analysis Program

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures governing use of Value Analysis. When adopted, the policies and procedures will apply to all units of the national park system and will supersede and replace the policies and procedures issued in July 1994.

DATES: Written comments will be accepted until September 19, 2000.

ADDRESSES: Draft Director's Order #90 is available on the Internet at http://www.nps.gov/refdesk/Dorders/index.htm. Requests for copies and written comments should be sent to Richard Turk, NPS Value Analysis Program Coordinator, Construction Program Management, P.O. Box 25287, 12795 W. Alameda Parkway, Denver, Colorado 80225–0287 or to his Internet address: rich_turk@nps.gov.

FOR FURTHER INFORMATION CONTACT: Rich Turk at (303) 969–2470.

SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. The policies and procedures governing Value Analysis have previously been published in the form of guideline NPS 90. That guideline will be superseded by the new Director's Order 90 (and a reference manual that will be issued subsequent to the Director's Order). The draft Director's Order covers topics such as the value analysis program, thresholds for application of value analysis for construction and non-construction projects, value engineering change proposals (VECP), annual report, plan of action, coordination, and funding.

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: August 24, 2000.

Michael LeBorgne,

Program Manager, Construction Program Management, Office of the Associate Director, Professional Services.

[FR Doc. 00–22126 Filed 8–29–00; 8:45 am]

BILLING CODE 4310–70–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; September 14, 2000 Public Hearing

Time and Date: 2:00 PM, Thursday, September 14, 2000.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

Status: Hearing OPEN to the Public at 2:00 PM.

Purpose: In conjunction with the quarterly meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedure: Individuals wishing to make statements or present written statements must provide advance notice to OPIC's Corporate Secretary no later than 5 PM, September 13, 2000. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM, September 13, 2000. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at cdown@opic.gov.

Dated: August 28, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–22299 Filed 8–28–00; 11:12 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–884 (Preliminary)]

Anhydrous Sodium Sulfate From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930,[2] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of anhydrous sodium sulfate from Canada,[3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 10, 2000, a petition was filed with the Commission and the Department of Commerce by Cooper Natural Resources (CNR), Tulsa, OK, and IMC Chemicals (IMCC), Overland Park, KS, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of anhydrous sodium sulfate from Canada. Accordingly, effective July 10, 2000, the Commission instituted antidumping investigation No. 731–TA–884 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 17, 2000.[4] The conference was held in Washington, DC, on July 31, 2000, and all persons who requested the opportunity were

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] 19 U.S.C. 1673b(a).

[3] For purposes of this investigation, anhydrous sodium sulfate, also referred to as ''salt cake'' or ''disodium sulfate,'' is an inorganic chemical with a chemical composition of Na_2SO_4. The ''Chemical Abstract Service'' number for anhydrous sodium sulfate is 7757–82–6. All forms and variations of anhydrous sodium sulfate are included within the scope of the investigation, regardless of grade, level of purity, production method, or form of packaging. Anhydrous sodium sulfate is currently classifiable under subheadings 2833.11.10 and 2833.11.50 of the Harmonized Tariff Schedule of the United States (HTS).

[4] 65 FR 44075.

permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 24, 2000. The views of the Commission are contained in USITC Publication 3345 (September 2000), entitled Anhydrous Sodium Sulfate From Canada: Investigation No. 731–TA–884 (Preliminary).

Issued: August 24, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–22197 Filed 8–29–00; 8:45 am]

BILLING CODE 7026–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–859 (Final)]

Circular Seamless Stainless Steel Hollow Products From Japan; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of circular seamless stainless steel hollow products [3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 26, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Altx, Inc., Watervliet, NY; American Extruded Products Corp., Beaver Falls, PA; DMV Stainless USA, Inc., Houston, TX; Salem Tube, Inc., Greenville, PA; Sandvik, Steel Co., Scranton, PA; International Extruded Products LLC d/b/a Wyman-Gordon Energy Products—IXP Buffalo, Buffalo, NY; [4] and United Steelworkers of America, AFL–CIO/CLC, Pittsburgh, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of circular seamless stainless steel hollow products from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 10, 2000 (65 FR 30133). The hearing was held in Washington, DC, on July 12, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 25, 2000. The views of the Commission are contained in USITC Publication 3344 (September 2000), entitled Circular Seamless Stainless Steel Hollow Products from Japan: Investigation No. 731–TA–859 (Final).

Issued: August 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–22194 Filed 8–29–00; 8:45 am]

BILLING CODE 7020–02–U

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Koplan and Vice Chairman Okun dissenting.

[3] For purposes of this investigation, Commerce has defined the subject merchandise as ''pipes, tubes, redraw hollows, and hollow bars, of circular cross-section, containing 10.5 percent or more by weight chromium, regardless of production process, outside diameter, wall thickness, length, industry specification (domestic, foreign or proprietary), grade or intended use. Common specifications for the subject circular seamless stainless steel hollow products include, but are not limited to, ASTM–A–213, ASTM–A–268, ASTM–A–269, ASTM–A–270, ASTM–A–271, ASTM–A–312, ASTM–A–376, ASTM–A–498, ASTM–A–511, ASTM–A–632, ASTM–A–731, ASTM–A–771, ASTM–A–789, ASTM–A–790, ASTM–A–826 and their proprietary or foreign equivalents.''

The products subject to this investigation are covered by statistical reporting numbers 7304.10.5020; 7304.10.5050; 7304.10.5080; 7304.41.3005; 7304.41.3015; 7304.41.3045; 7304.41.6005; 7304.41.6015; 7304.41.6045; 7304.49.0005; 7304.49.0015; 7304.49.0045; and 7304.49.0060 of the Harmonized Tariff Schedule of the United States (HTS).

[4] On June 7, 2000, International Extruded withdrew from participation as a petitioner in this investigation.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Review)]

Fresh Garlic From China

AGENCY: International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on fresh garlic from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 22, 2000.

FOR FURTHER INFORMATION CONTACT: Joanna Bonarriva (202–708–4083), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 FR 13989, March 15, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level,

representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on December 1, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on December 19, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 11, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 14, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 12, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 3, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before January 3, 2001. On January 30, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 1, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–22192 Filed 8–29–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–413–415 and 419 (Review)]

Certain Industrial Belts From Germany, Italy, Japan, and Singapore

Determinations

On the basis of the record [1] developed in these subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 1, 1999 (64 FR 29342) and determined on September 3, 1999, that it would conduct full reviews (64 FR 50106, September 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 10, 2000 (65 FR 6627). Since all requests by interested parties to appear at the hearing were withdrawn before its scheduled date, no hearing was held in these reviews.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on August 18, 2000. The views of the Commission are contained in USITC Publication 3341 (August 2000), entitled Certain Industrial Belts from Germany, Italy, Japan, and Singapore: Investigations Nos. 731–TA–413–415 and 419 (Review).

Issued: August 24, 2000.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn M. Bragg dissenting with respect to Italy, Japan, and Singapore.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–22196 Filed 8–29–00; 8:45 am]

BILLING CODE 7026–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–96 and 439–445 (Review)]

Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on industrial nitrocellulose from Brazil,[2] China, France, Germany, Japan, Korea,[3] and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty order on industrial nitrocellulose from Yugoslavia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 1, 1999 (64 FR 29344) and determined on September 3, 1999 that it would conduct full reviews (64 FR 50107, September 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 25, 1999 (64 FR 57483).[4] The hearing was held in Washington, DC, on June 8, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 24, 2000. The views of the Commission are contained in USITC Publication 3342 (August 2000), entitled Industrial Nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia: Investigations Nos. 731–TA–96 and 439–445 (Review).

Issued: August 24, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–22195 Filed 8–29–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Thelma J. Askey dissenting.

[3] Commissioner Thelma J. Askey dissenting.

[4] The Commission subsequently revised its schedule, publishing its notice in the **Federal Register** on February 7, 2000 (65 FR 5889). The Commission later revised the schedule again, publishing the second revised notice on June 26, 2000 (65 FR 39426).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–474 and 475 (Review)]

Chrome-Plated Lug Nuts From China and Taiwan

AGENCY: International Trade Commission.

ACTION: Cancellation of the hearing for the subject reviews.

EFFECTIVE DATE: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 14, 2000 (65 FR 37408), the Commission published a notice in the **Federal Register** scheduling full five-year reviews concerning the antidumping duty orders on chrome-plated lug nuts from China and Taiwan. The schedule provided for a public hearing on August 31, 2000. Requests to appear at the hearing were due to be filed on or before August 18, 2000. No requests were received. Since there was no request by any party to appear at the public hearing, the Commission determined to cancel the hearing on chrome-plated lug nuts from China and Taiwan. The Commission unanimously determined that no earlier announcement of this cancellation was possible.

For further information concerning these reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.35 and 207.62 of the Commission's rules.

Issued: August 24, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–22193 Filed 8–29–00; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to 28 U.S.C. 50.7

Notice is hereby given that on August 17, 2000, the United States lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas, Houston Division, in *United States* v. *Amoco Pipeline Company, Inc.*, Civ. A. No. H–00–2847. The proposed Consent Decree resolves civil claims of the United States under Section 311 of the Clean Water Act, 33 U.S.C. 1321, as amended by the Oil Pollution Act of 1990, against Amoco Pipeline Company, Inc. Under the proposed Consent Decree, Amoco agrees to pay a civil penalty of one million forty-three thousand dollars ($1,043,000.00), and to reimburse the Oil Spill Liability Trust Fund seven thousand dollars ($7,000.00) for EPA oversight costs. Amoco further agrees to install a spill alarm system at its Genoa Junction meter station in Houston, Texas at an approximate cost of thirty thousand dollars ($30,000.00). As part of the settlement, Amoco also agrees to hold harmless the Oil Spill Liability Trust Fund against any third-party claims arising out of the November 10, 1997 spill of crude oil at its Genoa Junction metering station.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington,

DC 20044–7611, and should refer to *United States* v. *Amoco Pipeline Company, Inc.*, DOJ No. 90–5–1–1–06365. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, Houston, Texas, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $4.00 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22136 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Certain Air Act

In accordance with Departmental policy, 38 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Appleton Papers, Inc.*, C.A. No. 00–216–J, was lodged on August 16, 2000, with the United States District Court for the Western District of Pennsylvania. The consent decree resolves the United States' claims against Defendant Appleton Papers, Inc. for violations of Section 111 of the Clean Air Act, 42 U.S.C. § 7411, and the Pulp Mill New Source Performance Standards (''NSPS''), 40 CFR part 60, subpart BB, with respect to the operation of Appleton's brown stock washer system. Further, the consent decree resolves the United States' claim that Appleton failed to comply with a recovery boiler fuel use limitation contained in an operating permit, issued pursuant to the Commonwealth of Pennsylvania's State Implementation Plan. The violations occurred at Appleton's facility, located in Roaring Spring, Pennsylvania.

In addition, the consent decree resolves the claims alleged in the Commonwealth of Pennsylvania's complaint-in-intervention, which is based upon the same violations referenced above.

Under the consent decree, Appleton has agreed to pay a civil penalty in the amount of $490,000. Further, Appleton will implement agreed-upon injunctive relief, requiring the construction of a Pulp Project that will bring Appleton into compliance with the Clean Air Act and the applicable NSPS regulations not later than January 31, 2002. Moreover, completion and implementation of the Pulp Project will result in Appleton's early compliance with the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry, 40 CFR part 63, subpart S, which become effective in 2006.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Appleton Papers, Inc.*, DOJ Reference No. 90–5–2–1–06607.

The proposed consent decree may be examined at the Office of the United States Attorney, 633 Post Office and Courthouse Building, Pittsburgh, Pennsylvania 15219; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $12.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22130 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and the Oil Pollution Act

Consistent with Department of Justice policy, notice is hereby given that on August 18, 2000, a proposed Consent Decree in *United States* v. *Davidson Sales & Maintenance, Inc. and Jack L. Davidson*, Civil Action No. 99–73518, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division.

In the action, the United States sought civil penalties under Section 311(b)(7) of the Clean Water Act, 33 U.S.C. 1311(b)(7), and the recovery of removal costs under Sections 1002 and 1017 of the Oil Pollution Act, 33 U.S.C. 2702, 2717, resulting from a discharge of oil into the Wilkenson Creek in Chelsea, Washtenaw County, Michigan, in September of 1995. Under the Consent Decree, the Defendants will pay $80,000, plus interest, over the course of two years in satisfaction of the claim for costs that the Coast Guard paid to a contractor who performed removal activities.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Davidson Sales & Maintenance, Inc. and Jack L. Davidson*, D.J. No. 90–5–1–1–06768.

The Consent Decree may be examined at the Office of the United States Attorney, 211 W. Fort St., Suite 2300, Detroit, MI 48226–3211. A copy of the Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the above-referenced case and DOJ Reference Number 90–5–1–1–06768, and enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22132 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the policy of the Department of Justice, 28 U.S.C. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Metropolitan Council,* Civ. No. 99–CV–1105 (DFW/AVB), was lodged with the United States District Court for the District of Minnesota on August 11, 2000. The action was brought by the United States against the Metropolitan Council, a subdivision of the State of Minnesota, which, among other things, operates a wastewater sewage treatment plant in St. Paul, Minnesota. The United State's complaint alleged that the Defendant violated various provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* (''Act''), the Act's New Source Performance Standards, 40 CFR part 60,

and the State of Minnesota State Implementation Plan (''SIP'') limiting emissions of particulate matter from multiple hearth incinerators operated by the Defendant which burned sewage sludge generated from the wastewater treatment plant.

Under the proposed consent decree, Metropolitan Council will undertake a series of compliance measures designed with the goal of eliminating future violations of applicable emission limitations until new control equipment is installed. Defendant, among other things, has designed and installed new dampers and seals on the incinerator's emergency stacks that will prevent leakage of particulate matter; will develop a fan alarm system; will develop and implement an operator training program; will develop and implement an improved operation and maintenance plan; and will limit the feed rate to the incinerators. In addition, Metropolitan Council is required to replace the existing multiple hearth incinerators with new fluidized bed incinerators in accordance with a schedule attached to the proposed decree.

In addition to the above, Metropolitan Council has agreed to expend not less than $1.6 million to perform a Supplemental Environmental Project—the installation of a dry electrostatic precipitator—which will result in an additional forty percent (40%) removal of particulate matter from emissions. Installation of this additional control device is not required by the Act or the Minnesota SIP. Beyond these various compliance measures, Metropolitan Council will also pay a civil penalty of $250,000.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the District of Minnesota, United States Courthouse, 300 South Fourth Street, Minneapolis, MN (contact Assistant United States Attorney Friedrich A.P. Siekert (612–664–5600)); (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Mary McAuliffe (312–886–6237)); and, (3) a copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy, please refer to *United States* v. *Metropolitan Council,* DJ #90–5–2–1–2243, and enclose a check in the amount of $8.25 for the consent decree only (33 pages at 25 cents per page reproduction costs), or $10.75 for the consent decree and all appendices (43 pages), made payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22133 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period on Eighth Consent Decree in United States v. Nalco Chemical Company, et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that the public comment period on a proposed eighth Consent Decree in *United States* v. *Nalco Chemical Company, et al.,* Case No. 91–C–4482 (N.D. Ill.) entered into by the United States on behalf of U.S. EPA and Commonwealth Edison Company has been extended until September 21, 2000. The eighth Consent Decree was lodged on August 3, 1999 with the United States District Court for the Northern District of Illinois. Notice of the public comment period was previously published at 65 FR 44809 (July 20, 2000).

Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Nalco Chemical Company, et al.,* D.J. Ref. No. 90–11–3–687. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by request addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the Consent Decree, please enclose a check in the amount of $37.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22135 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *Operating Industries, Inc., et al.,* No. CV 00–08794 SVW (CW_X), was lodged on August 18, 2000, with the United States District Court for the Central District of California, Western Division.

In a complaint filed concurrently with the lodging of the consent decree, the United States, the State of California, and the California Hazardous Substance Account, seek injunctive relief for performance of response actions and reimbursement of response costs incurred by the United States Environmental Protection Agency (''EPA'') and by the California Department of Toxic Substances Control (''DTSC''), pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, in response to releases of hazardous substances at the Operating Industries, Inc. (''OII'') Superfund site in Monterey Park, California.

Under the proposed consent decree, the settling defendants have agreed to fund and perform future response actions at the OII Site. The consent decree also imposes obligations on, and provides benefits to Greenfield Monterey Park, LLC (''Greenfield''), an entity that intends to purchase a portion of the site for redevelopment purposes.

The consent decree requires the Owner/Operator Group, the City of Monterey Park and Southern California Edison to contribute approximately $8.65 million to a trust that will be used to pay for past and future costs of remediating the site, and the Owner/Operator Group to pay $3.1 million to the OII Custodial Trust, to be established for the purpose of receiving, holding and distributing funds in accordance with the provisions of the consent decree. If Greenfield purchases the Development Parcel it will conduct remedial action work valued at approximately $6–$7 million at the northern portion of the site and pay approximately $3,633,000 to the Owner/Operator Group which, in turn, will deposit those funds into the OII Site Custodial Trust. The Generator Group will create and administer an escrow account, and conduct certain work valued at approximately $850,000 at the

OII Site. Finally, the consent decree obligates the Owner/Operator Group and the Generator Group to pay approximately $725,000 to the Casmalia Resources Hazardous Waste Management Facility (the ''Casmalia Site'') to resolve their de minimis liability for hazardous leachate that was transferred from the OII Site to the Casmalia Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the environment and Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Operating Industries, Inc., et al.,* DOJ Ref. #90–11–2–156/3. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at the EPA Region 9 Superfund Records Center, 75 Hawthorne Street, Fourth Floor, San Francisco, California 94105, and at the Office of the United States Attorney for the Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $212.75 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the decree, exclusive of the defendants' signature pages and the attachments, may be obtained for $52.50.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–22134 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *Sapo Corporation, et al.,* Civil Action No. 97–2271 (D.P.R.), was lodged on August 17, 2000 with the United States District Court for the District of Puerto Rico. The proposed consent decree resolves civil claims of the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), under the Federal Water Pollution Control Act, as amended (''Clean Water Act''), 33 U.S.C. 1251–1387, against defendants Sapo Corporation, Concho Corporation, Arnold Benus, and Salvador Suau. These claims are injunctive relief and civil penalties arising from defendants' alleged discharged of wastewater into the Caribbean Sea at the Copamarina Beach Resort in Cana Gorda Ward, Guanica, Puerto Rico, without a National Pollutant Discharge Elimination System permit from EPA, in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a).

Under the terms of the proposed consent decree, the defendants will pay a civil penalty of $200,000 to the United States and will be permanently enjoined from discharging any pollutant from any source at the Copamarina Beach Resort into the waters of the United States unless such discharge is in full compliance with the Clean Water Act and its implementing regulations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Sapo Corporation, et al.,* Civil Action No. 97–2271 (D.P.R.), DOJ Ref. No. 90–5–1–1–4471.

The proposed consent decree may be examined at the Office of the United States Attorney, Federal Building, Chardon Avenue, Hato Rey, Puerto Rico 00918, and at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611. In requesting a copy by mail, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs for the Decree) made payable to Consent Decree Library.

Bruce Gelbar,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 00–22131 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2079–00; AG Order No. 2321–2000]

RIN 1115–AE 26

Termination of Bosnia-Herzegovina Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General's designation of Bosnia-Herzegovina for Temporary Protected Status (TPS) expires on August 10, 2000. After reviewing country conditions and consulting with the appropriate Government agencies, the Attorney General has determined that conditions in Bosnia-Herzegovina no longer support TPS designation. However, because this determination was not made at least 60 days before the termination date, the designation of Bosnia-Herzegovina for TPS is automatically extended for a period of 6 months, valid until February 10, 2001. The termination of the TPS designation of Bosnia-Herzegovina will therefore take effect on February 10, 2001. After that date, aliens who are nationals of Bosnia-Herzegovina (and aliens having no nationality who last habitually resided in Bosnia-Herzegovina) who have been granted TPS under the Bosnia-Herzegovina designation will no longer possess such status. This notice contains information regarding the 6-month extension and subsequent termination of the TPS designation for Bosnia-Herzegovina.

DATES: The TPS designation for Bosnia-Herzegovina is extended until February 10, 2001. On February 10, 2001, the TPS designation for Bosnia-Herzegovina will be terminated. The re-registration period for the default 6-month extension begins August 30, 2000 and ends September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Designation and Termination of TPS?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or part of a state for TPS. The Attorney

General may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the TPS designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(3)(A).

Section 244(b)(3) of the Act further requires the Attorney General to determine whether the conditions for such a designation continue to be met and to terminate the state's designation when the Attorney General determines conditions are no longer met. 8 U.S.C. 1254a(b)(3)(A), (B). The Attorney General must then publish a notice of termination in the **Federal Register.** If the Attorney General fails to make the determination required by section 244(b)(3)(A) of the Act at least 60 days before the end of the period of designation, then the designation is automatically extended for an additional period of 6 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide To Terminate TPS for Bosnia-Herzegovina?

On August 11, 1999, the Attorney General published a notice in the **Federal Register** extending TPS for Bosnia-Herzegovina for a period of 1 year, based upon conditions in Bosnia-Herzegovina at that time. 64 FR 43720 (Aug. 11, 1999). That TPS designation is scheduled to expire on August 10, 2000.

Based upon a more recent review of conditions within Bosnia-Herzegovina by the Departments of Justice and State, the Attorney General finds that conditions no longer support a TPS designation. Since June 10, 1999, when Serb forces withdrew from northern Kosovo and the North Atlantic Treaty Organization suspended its airstrikes, Bosnia-Herzegovina has been relatively peaceful, with the exception of occasional and isolated outbreaks of violence. In addition, major infrastructure improvements have recently begun in Bosnia-Herzegovina and democratic elections are planned for later this year.

A Department of State memorandum concerning Bosnia-Herzegovina states that, ''Bosnia and Herzegovina is now experiencing unprecedented spontaneous return of its nationals (of all three ethnic groups) from neighboring countries. This spontaneous return suggests that large and increasing numbers of Bosnians themselves have concluded that it is safe enough to return.''

Based on these findings, the Attorney General has decided to terminate the designation of Bosnia-Herzegovina for TPS. However, since the Attorney General did not make this determination at least 60 days before the end of the current designation, the designation is automatically extended by section 244(b)(3)(C) of the Act for an additional 6 months. The termination will therefore take effect at the end of the 6-month extension.

If I Currently Have TPS, how do I Register for the 6-Month Extension?

Persons previously granted TPS under the Bosnia-Herzegovina designation may apply for the 6-month extension by filing the Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins August 30, 2000 and ends September 29, 2000. Additionally, those applying must file the Form I–765, Application for Employment Authorization. See the chart below to determine whether or not you must submit the $100 filing fee with the Form I–765.

If—	Then—
You are applying for employment authorization through February 10, 2001.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765 with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file the Form I–765, a fee waiver request, and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you must also include two identification photographs (1½″ × 1½″).

Is Late Registration Possible?

Yes, in addition to timely re-registration, late initial registration is possible for some persons from Bosnia-Herzegovina under 8 CFR 244.2(f)(2).

What Are the Requirements for Late Initial Registration?

To apply for late initial registration an applicant must:

- Be a national of Bosnia-Herzegovina (or an alien having no nationality who last habitually resided in Bosnia-Herzegovina);
- Have been continuously physically present in the United States since August 10, 1992;
- Have continuously resided in the United States since August 10, 1992; and
- Be admissible as an immigrant, except as otherwise provided in section 244(c) of the Act.

Additionally, the applicant for late initial registration must be able to demonstrate that, during the initial registration period, he or she:

- Was a nonimmigrant, or was granted voluntary departure or any relief from removal;
- Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review;
- Was a parolee or had a pending request for reparole; or
- Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must register no later than 60 days from the expiration or termination of the qualifying condition.

Where Should I File for an Extension of TPS?

You may register for the extension of TPS by submitting an application and accompanying materials to the Immigration and Naturalization Service's local office that has jurisdiction over your place of residence.

When can I File for an Extension of TPS?

The 30-day re-registration period begins August 30, 2000, and will remain in effect until September 29, 2000.

What Can I do if I Feel that my Return to Bosnia-Herzegovina is unsafe?

There may be other avenues of immigration protection or relief available to aliens who are nationals of Bosnia-Herzegovina (and aliens having no nationality who last habitually

resided in Bosnia-Herzegovina) in the United States who believe that their particular circumstances make return to Bosnia-Herzegovina unsafe. Such avenues may include, but are not limited to, asylum or withholding or removal.

How Does the Termination of TPS Affect Former TPS Beneficiaries?

After the designation of Bosnia-Herzegovina for TPS is terminated on February 10, 2001, those aliens who are nationals of Bosnia-Herzegovina (and aliens having no nationality who last habitually resided in Bosnia-Herzegovina) will revert back to the immigration status they had prior to TPS, unless they have been granted another immigration status. The stay of removal and eligibility for employment authorization due to the designation of Bosnia-Herzegovina for TPS will no longer be available. The termination of the TPS designation for Bosnia-Herzegovina, however, will not affect any pending applications for other forms of immigration relief.

Those persons who were granted TPS under the Bosnia-Herzegovina designation may begin accruing unlawful presence as of February 10, 2001, if they have not been granted any other immigration benefit or have no application for such a benefit pending. Aliens who accrue certain periods of unlawful presence in the United States may be barred from admission to the United States under section 212(a)(9)(B)(i) of the Act. See 8 U.S.C. 1182(a)(9)(B)(i).

Notice of 6-month Extension and Termination of Designation of Bosnia-Herzegovina Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of Government concerning conflict and security conditions in Bosnia-Herzegovina. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that Bosnia-Herzegovina no longer meets the conditions for designation of TPS under section 233(b)(1) of the Act. See 8 U.S.C. 1254a(b)(1).

I understand that, although Bosnia-Herzegovina is still rebuilding from the war, persons can return to Bosnia-Herzegovina in safety. In view of the recommendations of the Departments of Justice and State for termination, I terminate the designation of Bosnia-Herzegovina under the TPS program. However, Since I did not make this determination at least 60 days before the expiration of the designation, the designation is automatically extended for 6 months, until February 10, 2001.

Accordingly, I order as follows:

(1) The designation of Bosnia-Herzegovina for TPS under section 244(b) of the Act is terminated effective February 10, 2001.

(2) I estimate that there are no more than 400 nationals of Bosnia-Herzegovina (and aliens having no nationality who last habitually resided in Bosnia-Herzegovina) who have been previously granted TPS.

(3) Information concerning the termination of the TPS program for nationals of Bosnia-Herzegovina (and aliens having no nationality who last habitually resided in Bosnia-Herzegovina) will be available at local Service offices upon publication of this notice or at the Service's website at http://www.ins.usdoj.gov.

Dated: August 23, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–22138 Filed 8–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade; Negotiations and Trade Policy

Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 15, 2000, 10:00 am, U.S. Department of Labor, C–5320—Seminar Room 6, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be close to the public.

FOR FURTHER INFORMATION, CONTACT: Jorge Perez-Lopez, Director, Office of International Economic Affairs; Phone: (202) 219–7579.

Signed at Washington, D.C., this 23rd day of August 2000.

MacAuthur DeShazer,

Associate Deputy Under Secretary, International Affairs.

[FR Doc. 00–22145 Filed 8–29–00; 8:45 am]

BILLING CODE 4510–28–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 398, ''Personal Qualification Statement—Licensee''.

3. *The form number if applicable:* NRC Form 398.

4. *How often the collection is required:* On occasion and every six years (at renewal).

5. *Who will be required or asked to report:* Individuals requiring a license to operate the controls at a nuclear reactor.

6. *An estimate of the number of responses:* 1,610 (one per respondent).

7. *The estimated number of annual respondents:* 1,610.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,950, or approximately 1.2 hours per response.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC Form 398 requests detailed information that should be submitted by a licensing applicant and facility licensee when applying for a new or renewal license to operate the controls at a nuclear reactor facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

A copy of the final supporting statement may be viewed free of charge

at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 29, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Amy Farrell, Office of Information and Regulatory Affairs (3150–0090), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of August 2000.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–22154 Filed 8–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission:* extension.

2. *The title of the information collection:* NRC Form 171, ''Duplication Request''.

3. *The form number if applicable:* NRC Form 171.

4. *How often the collection is required:* On occasion.

5. *Who is required or asked to report:* Individuals or companies requesting document duplication.

6. *An estimate of the number of responses:* 16,800.

7. *The estimated number of annual respondents:* 16,800.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,109 hours (16,800 forms X .066hours/form) or about 4 minutes per form.

9. *Indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* This form is utilized by individual members of the public requesting reproduction of publicly available documents in NRC's Headquarters Public Document Room. Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 29, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Amy Farrell, Office of Information and Regulatory Affairs (3150–0066), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of August 2000.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–22155 Filed 8–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Electric Power Company (the licensee) to withdraw its February 28, 1998, application for amendments to Facility Operating License Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plants, Units 1 and 2, respectively, located in Two Rivers, Wisconsin.

The proposed amendments would have modified the following six Technical Specification sections: (1) 15.3.6, ''Containment System,'' bases; (2) 15.3.12, ''Control Room Emergency Filtration,'' including bases; (3) 15.4.4, ''Containment Tests,'' bases; (4) 15.4.11 ''Control Room Emergency Filtration,'' including bases; (5) 15.6.8, ''Plant Operating Procedures;'' and (6) 15.6.12, ''Containment Leakage Rate Testing Program.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 15, 1998 (63 FR 38207). However, by letter dated August 17, 2000, the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendments dated February 26, 1998, as supplemented July 12, 1999, and the licensee's letter dated August 17, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 22nd day of August 2000.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–22156 Filed 8–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop to Discuss Current Issues Associated with the Design and Placement of Erosion Protection

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a Public Workshop to discuss current issues associated with the design and placement of erosion protection. The goal of the workshop will be to provide a forum for NRC staff to discuss, with the NRC licensees and other interested stakeholders, NRC's process for evaluating the erosion protection aspects of reclamation plans, decommissioning plans, and completion reports. Other erosion protection issues associated with the closure and reclamation of radioactive waste sites will also be discussed.

DATES: The workshop will be held at the Adam's Mark Hotel in Grand Junction, Colorado on October 3–4, 2000, beginning at 8:15 a.m.

SUPPLEMENTARY INFORMATION: Over the past 15 years, various licensees and the Department of Energy (DOE) have completed reclamation activities at over 20 uranium mill tailings sites across the United States. At most of these sites, a significant amount of rock riprap erosion protection was placed to protect the reclaimed tailings piles from erosion. NRC staff review of construction activities at these sites indicated that some were deficient in meeting construction specifications, particularly in the placement of the rock layers and in achieving the proper in-place gradations. The NRC staff has determined that some of the placement problems were related to inadequate quality assurance and testing programs, inexperience of contractor construction personnel with rock placement, an insufficient knowledge of standard industry practice, and an insufficient understanding of the quality of rock placement expected by the NRC staff to meet regulatory requirements.

The NRC staff held a rock placement workshop in 1999 for the benefit of agreement states to discuss various technical issues associated with rock placement. As part of our continuing efforts to involve the regulated community and other stakeholders in our reclamation approval activities, we will hold an expanded workshop on October 3–4, 2000 to discuss current issues related to riprap design and placement at various types of waste disposal facilities. The workshop will focus primarily on riprap placement, with recommendations for improving rock placement by using proper placement techniques and specific design techniques. The staff seeks to obtain perspectives from other regulators, agreement states, licensees, consultants, and other interested stakeholders.

The workshop will be held at the Adam's Mark Hotel in Grand Junction, Colorado on October 3–4, 2000, beginning at 8:15 a.m. The preliminary agenda for the first day includes presentations by:

(1) NRC staff, discussing experiences, regulatory requirements, expectations, and recommendations for achieving acceptable rock placement;

(2) NRC consultants, presenting the history and development of design guidance, including videotapes of prototype flume studies that simulate large flood flows over riprap layers;

(3) regulators from agreement states, providing their perspectives and experiences with rock placement;

(4) NRC licensees, discussing their perspective and experiences in meeting regulatory requirements;

(5) licensee contractors, discussing actual construction techniques that have been used to achieve acceptable rock placement and providing recommendations for designers;

(6) DOE representatives discussing the history of the DOE Title I program, the long-term surveillance and maintenance program, and the evolution and development of successful rock placement techniques;

(7) licensee consultants, discussing their experiences with riprap design and placement; and

(8) other interested parties, who may wish to provide input.

On October 4, 2000, site tours will be conducted at several sites where rock placement has been reviewed and approved by the NRC staff. These sites include Grand Junction (Cheney Reservoir) and Naturita (Umetco Upper Burbank). In addition, rock placement at the Umetco Title II site, regulated by the State of Colorado, will be observed.

The workshop is free and will be open to the public. Hotel accommodations and transportation are the responsibility of each participant. A block of rooms has been set aside at the Adam's Mark Hotel, (970) 241–8888, until September 22, 2000. These rooms are available at the government rate of $55 plus tax, and reservations should be made as early as possible. Rental cars are available from major rental car companies at the Grand Junction airport.

The NRC staff strongly encourages all interested stakeholders to attend and participate in this workshop. It will offer a unique opportunity for NRC staff and the industry to provide insights, perspectives, and information that is important for the NRC staff to consider as it seeks ways to improve its regulatory program.

FOR FURTHER INFORMATION CONTACT: Ted Johnson, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards (NMSS/FCSS/FCLB), at (301) 415–6658 or e-mail at TLJ@NRC.GOV. In addition, to obtain an approximate estimate of the total number of participants and equipment needed, please contact Mr. Johnson if you plan to attend the workshop or if you have specific audio-visual requirements.

Dated at Rockville, Maryland this 24th day of August, 2000.

For the U.S. Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–22157 Filed 8–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 28, September 4, 11, 18, 25, and October 2, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 28

There are no meetings scheduled for the Week of August 28.

Week of September 4—Tentative

There are no meetings scheduled for the Week of September 4.

Week of September 11—Tentative

There are no meetings scheduled for the Week of September 11.

Week of September 18—Tentative

There are no meetings scheduled for the Week of September 18.

Week of September 25—Tentative

Friday, September 29

9:25 a.m.

Affirmative Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on Risk-Informing Special Treatment Requirements (Public Meeting) (Contact: Tim Reed, 301–415–1462)
1:30 p.m.
Briefing on Threat Environment Assessment (Closed—Ex. 1)

Week of October 2—Tentative

Friday, October 6

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Meeting with ACRS (Public Meeting) (Contact: John Larkins, 301–415–7360)

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on August 21, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of HYDRO RESOURCES, INC. Motion for Partial Reconsideration of CLI–00–08'' be held on August 21, and on less than one week's notice to the public.

By a vote of 5–0 on August 21, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental Issues (Closed Ex. 4 and 9)'' be held on August 21, and on less than one week's notice to the public.

By a vote of 5–0 on August 24, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Proposed License to Export Highly Enriched Uranium to the Netherlands for Use as Fuel in the High Flux Reactor in Petten (Application No. XSNM02611—Revised)'' be held on August 24, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 25, 2000.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–22320 Filed 8–28–00; 1:12 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24619; File No. 812–11942]

Nationwide Separate Account Trust, et al., Notice of Application

August 23, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order of exemption under Section 6(c) of the Investment Company Act of 1940 (''the Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application

Applicants seek an order to the extent necessary to permit shares of any current or future series of Nationwide Separate Account Trust (''NSAT'') and shares of any investment company or series thereof now or in the future registered under the Act that is designed to fund insurance products and for which Villanova Mutual Fund Capital Trust, or any of its affiliates (''VMF''), may serve as investment adviser, administrator, manager, principal underwriter or sponsor (NSAT and such other investment companies are referred to collectively as ''NSAT''), to be sold to and held by (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans.

Applicants

Nationwide Separate Account Trust and Villanova Mutual Fund Capital Trust. NSAT and VMF are, collectively, referred to herein as the ''Applicants.''

Filing Date

The application was filed on May 16, 2000.

Hearing or Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 18, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Person may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Dina A. Tantra, Counsel, Nationwide Insurance, One Nationwide Plaza, 1–35–13, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. NSAT is an open-end investment company organized under the laws of Massachusetts by Declaration of Trust. NSAT currently is comprised of 21 separate series, not all of which have yet commenced operations; additional series may be added in the future.

2. VMF is a registered investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and is an indirect, majority-owned subsidiary of Nationwide Financial Services, Inc., a provider, through its subsidiaries and affiliates of diversified financial services. VMF serves as the investment adviser for each current series of NSAT.

3. NSAT currently offers its shares to affiliated insurance companies' separate accounts to fund the benefits under variable contracts and variable life insurance policies. NSAT also proposes to offer its shares to both affiliated and unaffiliated insurance companies for their separate accounts as the underlying investment vehicle to fund either variable annuity or variable life insurance policies or contracts (collectively, ''Variable Contracts''). Affiliated and unaffiliated separate accounts owning shares of NSAT and their insurance company depositors are

referred to as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

4. NSAT also proposes to offer one or more series of its shares directly to qualified pension and retirement plans (''Qualified Plans'') outside the separate account context. The Qualified Plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(c) of the Internal Revenue Code of 1986, as amended (''Code''). NSAT's shares will be sold to Qualified Plans which are, or are designed to be, subject to the Employee Retirement Income Security Act of 1984 (''ERISA''), as amended.

5. The Participating Insurance Companies will establish their own Participating Separate Accounts and design their own contracts. Each Participating Insurance Company will enter into a fund participation agreement with NSAT on behalf of its Participating Separate Account will have the legal obligation of satisfying all requirements under state and federal law. The role of NSAT, so far as the federal securities laws are applicable, will be to offer their shares to separate accounts of Participating Insurance Companies and to Qualified Plans and to fulfill any conditions that the Commission may impose upon granting the order requested in the application.

6. Qualified Plans may choose NSAT (or any series thereof) as their sole investment or as one of several investments. Qualified Plan participants may or may not be given an investment choice depending on the Qualified Plan itself. Shares of NSAT sold to Qualified Plans would be held by the trustee(s) of the Qualified Plans as mandated by Section 403(a) of ERISA. VMF will not act as investment adviser to any of the Qualified Plans that will purchase shares of NSAT. There will be no pass-through voting to the participants in such Qualified Plans as it is not required to be provided under ERISA.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) (including any comparable provisions of a rule that replaces Rule 6e–3(T)) thereunder, respectively to the extent necessary to permit shares of NSAT to be offered and sold to variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated insurance companies and to Qualified Plans. Applicants submit that the exemptions requested are appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the Act or the rules or regulations thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Section 9(a) of the Act, which makes it unlawful for certain individuals to act in the capacity of employee, officer, or director for a UIT, by limiting the application of the eligibility restrictions in Section 9(a) to affiliated persons directly participating in the management of a registered investment company; and Sections 13(a), 15(a), and 15(b) of the Act to the extent those Sections might be deemed to require ''pass through voting'' with respect to an underlying fund's shares, by allowing an insurance company to disregard voting instructions of contract owners in certain circumstances. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the separate account (''Underlying Fund'') offers its shares ''exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company.* * *'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or flexible premium variable life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.'' Rule 6e–2(b)(15) also does not permit the sale of shares of the underlying fund to Qualified Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), and 15(a) and 15(b) of the Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available, however, only where the separate account's underlying fund offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account * * * '' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies and also does not permit the sale of the underlying funds to Qualified Plans.

5. Applicants state that the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is not affected by the purchase of shares of NST by a Qualified Plan. However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only where shares of the underling fund are offered exclusively to separate accounts, exemptive relief is necessary if shares of NSAT are also to be sold to Qualified Plans.

6. Applicants state that the current tax law permits NSAT to increase its asset base through the sale of shares to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be

treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. 1.8 17–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of the Act preceded the issuance of these Treasury regulations which made it possible for shares of a fund to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares of NSAT to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants assert that the sale of shares of the same investment company both to separate accounts through which variable life insurance contracts are issued and Qualified Plans could not have been contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

8. Applicants assert that if NSAT were to sell shares only to Qualified Plans or to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is requested in the application only because some of the separate accounts that will invest in NSAT (or series thereof) may themselves be investment companies that rely on Rules 6e–2 and 6e–3(T) and that desire to have the relief continue in place.

9. In general, Section 9(a) of the Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from serving in various capacities with respect to an underlying registered management investment company. More specifically, Section 9(a)(3) of the Act provides that it is unlawful for any registered open-end investment company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

10. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of NSAT. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts. Applicants assert that it also is unnecessary to apply the restrictions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the funds as a funding medium for variable contracts. Moreover, Applicants state that the appropriateness of the relief requested will not be affected by the proposed sale of shares of NSAT to Qualified Plans, because the insulation of NSAT from those individuals who are disqualified under the Act remains in place.

11. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act provide exemptions from the pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of the contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulating authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such company's investment policies, principal underwriter, or any investment advisor (provided that disregarding such voting instructions is reasonable and subject to other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

12. Applicants further represent that the sale of NSAT shares to Qualified Plans should not affect the relief requested. With respect to Qualified Plans, there is no requirement to pass-through voting rights to Qualified Plan participants. Shares of the Funds sold to Qualified Plans would be held by the trustees of such Qualified Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (2) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies. the Plan trustees have exclusive authority and responsibility for voting proxies.

13. Applicants state that where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Accordingly, Applicants submit that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since such Qualified Plans are not entitled to pass-through voting privileges.

14. Applicants generally expect many Qualified Plans to have their trustee(s) or other fiduciaries exercise voting rights attributable to investment

securities held by the Qualified Plan in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), or investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Applicants submit that where a Qualified Plan does not provide participants with the right to give voting instructions, there is no potential for material irreconcilable conflicts of interest between or among contract owners and Plan investors with respect to voting of NSAT's shares. Applicants further submit that where a Qualified Plan does provide participants with the right to give voting instructions, they see no reason to believe that participants in Qualified Plans generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage contract owners. The purchase of shares of NSAT by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed and shared funding.

15. Applicants submit that even if a Qualified Plan were to hold a controlling interest in NSAT, such control would not disadvantage other investors in NSAT to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in NSAT by a Qualified Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

16. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

17. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Participating Separate Account's investment in NSAT.

18. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard contract owner voting instructions. Potential disagreement is limited by the requirement that disregarding voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of NSAT, to withdraw its separate account investment in NSAT. No charge or penalty will be imposed as a result of such a withdrawal.

19. Applicants submit that there is no reason why the investment policies of NSAT with mixed funding would, or should, be materially different from what those policies would, or should, be if NSAT supported only variable annuity or only variable life insurance contracts. Hence, Applicants state, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that NSAT will not be managed to favor or disfavor any particular insurer or type of contract.

20. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying the variable contracts held in the portfolios of management investment companies. Treasury Regulation Section 1.817–5(f)(3)(iii), which establishes diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants assert that neither the Code, the Treasury regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflicts of interest if qualified plans, variable annuity separate accounts, and variable life separate accounts all invest in the same management investment company.

21. Applicants note that while there are differences in the manner in which distributions from variable contracts and Qualified Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Participating Separate Account or a Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or Qualified Plan will redeem shares of NSAT at their net asset value in conformity with Rule 22c-1 under the Act to provide proceeds to meet distribution needs. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the separate account into the general account to make distributions in accordance with the terms of the Variable Contract.

22. Applicants state that the sale of shares to Qualified Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants submit that there should be very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

23. Applicants also state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and to Qualified Plans. The transfer agent for NSAT will inform each Participating Insurance Company of each Participating Separate Account's share ownership in NSAT, as well as inform the trustees of Qualified Plans of their holdings. The Participating Insurance company then will solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T), as applicable, and its participation agreement with NSAT. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of NSAT would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

24. Applicants submit that the ability of NSAT to sell its shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the Act, with respect to any contract owner as opposed to a Qualified Plan participant.

Regardless of the rights and benefits of Plan participants or contract owners, the Qualified Plans and the Participating Separate Accounts only have rights with respect to their respective shares of NSAT. No shareholder of NSAT has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

25. Applicants state that there are no conflicts between the contract owners of Participating Separate Accounts and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that shareholders may not all agree with a particular proposal. While interests and opinions of shareholders may differ, however, this does not mean that there are any inherent conflicts of interest between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Qualified Plans can make the decision quickly and redeem their shares of NSAT and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most Qualified Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should the interests of contract owners and the interests of Qualified Plans conflict, the conflicts can be resolved almost immediately because the trustees of the Qualified Plans can, independently, redeem shares out of NSAT.

26. Applicants also assert that there does not appear to be any greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and contract owners of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity and variable life insurance contract owners.

27. Applicants believe that the summary of the discussion contained herein demonstrates that the sale of shares of NSAT to qualified plans and variable contracts does not increase the risk of material irreconcilable conflicts of interest. Furthermore, Applicants state that the use of NSAT with respect to Qualified Plans is not substantially different from NSAT's current use, in that Qualified Plans, like variable contracts, are generally long-term retirement vehicles. In addition, Applicants assert that regardless of the type of shareholder in NSAT, VMF is or would be contractually or otherwise obligated to manage NSAT solely and exclusively in accordance with NSAT's investment objectives, policies and restrictions as well as any guidelines established by NSAT's Board of Trustees.

28. Applicants assert that various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of public name recognition as investment professionals. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants assert that use of NSAT as a common investment medium for variable contracts would ameliorate these concerns. Participating Insurance companies would benefit not only from the investment advisory and administrative expertise of VMF and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants submit that therefore, making NSAT available for mixed and shared funding will encourage more insurance companies to offer variable contracts. Applicants claim that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Moreover, the sale of the shares of NSAT to Qualified Plans should further increase the amount of assets available for investment by NSAT. This in turn, should inure to the benefit of contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to NSAT more feasible.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding and sales of Fund shares to Qualified Plans.

Applicants' Conditions

Applicants consent to the following conditions if the application is granted:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of NSAT shall consist of persons who are not ''interested persons'' of NSAT, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by rule, or by order upon application.

2. The Board will monitor NSAT for the existence of any material irreconcilable conflict among the interests of the contract owners of all Participating Separate Accounts and of the participants of Qualified Plans investing in NSAT. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. Participating Insurance Companies, VMF, any other investment adviser to any series of NSAT, and any Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of the assets of NSAT (''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonable necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever it has determined to disregard contract owner voting instructions and, when pass-through voting is applicable, an obligation of each Qualified Plan to inform the Board whenever it has determined to disregard voting

instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in NSAT, and such agreements shall provide, in the case of Participating Insurance Companies, that such responsibilities will be carried out with a view only to the interests of contract owners, or in the case of Qualified Plans, Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from NSAT or any series thereof and reinvesting such assets in a different investment medium which may include another series of NSAT; (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity or life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of NSAT, to withdraw its separate account's investment in NSAT, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of NSAT, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in NSAT and these responsibilities will be carried out with a view to the interests of the contract owners and Plan participants, as appropriate.

For purposes of Condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict but in no event will NSAT, or VMF (or any other investment adviser) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of the majority of contract owners materially and adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition 4 to establish a new funding medium for such Qualified Plan if: (a) An offer to do so has been declined by a vote of a majority of Qualified Plan participants materially and adversely affected by the irreconcilable material conflict, or (b) pursuant to governing Qualified Plan documents and applicable law, such Qualified Plan makes such decision without a vote of its participants.

5. Participants will be informed promptly in writing of the Board's determination of the existence of a material irreconcilable conflict and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for contract owners. Accordingly, Participating Insurance Companies will vote shares of NSAT or series thereof held in Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. In addition, each Participating Insurance Company will vote shares of NSAT, or series thereof, held in its separate accounts for which it has not received timely voting instructions as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts calculate voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote NSAT's shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts shall be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in NSAT. Each Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts of interest received by the Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records and such minutes or other records shall be made available to the Commission upon request.

8. NSAT will notify all Participating Insurance Companies and Qualified Plans that disclosure in separate account prospectuses or plan prospectuses or other plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. NSAT shall disclose in its prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in NSAT and the interest of Qualified Plans investing in NSAT may conflict, and (c) the Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

9. NSAT will comply with all provisions of the Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of NSAT). In particular, NSAT will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although NSAT is not one of the trusts described in Section 16(c) of the Act) as well as with Section 16(a) and, if and when applicable, Section 16(b) of the Act. Further, NSAT will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then NSAT and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and proposed Rule 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in NSAT.

12. NSAT and its respective series will not accept a purchase from a Qualified Plan or a Qualified Plan participant shareholder if such purchase would make the shareholder an owner of 10% or more of the shares of any series of NSAT, unless such Qualified Plan executes a participation agreement including the conditions of the Application set forth herein, to the extent applicable. A qualified Plan or Qualified Plan participant will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any series of NSAT.

Conclusion

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43196; File No. SR–CBOE–00–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Documentation of Actions Taken With Respect to its Retail Automatic Execution System.

August 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify its current practice of documenting the reasons for certain actions taken by Exchange officials with respect to its operation of the Retail Automatic Execution System (''RAES''). The Exchange has filed the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule.[3]

The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

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 add an Interpretation to Exchange Rule 6.8, RAES Operations (''RAES Rule''), in order to codify the Exchange's existing practice of documenting the reasons for actions taken by Exchange officials that result either in the deactivation of RAES or in the operation of RAES in other than the normal manner (''RAES Action'' or ''RAES Actions'').

Background

The RAES Rule details the operation of the Exchange's RAES system, including which orders are eligible for execution on RAES; how eligible order size is determined; how execution price is determined; how market-makers are assigned to RAES trades; when otherwise eligible orders are rejected from RAES for manual handling; and under what circumstances RAES may be disengaged. Furthermore, Exchange Rule 6.6, Unusual Market Conditions (''Fast Market Rule''), provides authority for deactivating RAES and for deactivating the feature of RAES that causes RAES orders to be rejected and rerouted for manual execution (''RAES Reject Feature''). The CBOE represents that the provisions of the RAES Rule and the Fast Market Rule present members and investors with a clear description of: (1) Exactly how an order may be handled by the RAES system; and (2) the circumstances under which RAES Deactivation or Non-Normal Operation Action may be taken.

Current Documentation Procedures

The CBOE represents that it has long employed procedures for ensuring that a RAES Action is taken pursuant to authority under Exchange rules. One such procedure, required in connection with all such RAES Actions, is the documentation of the reasons for any RAES Action taken. The Exchange represents that it has required reasons for each such RAES Action taken to be recorded in a Control Room log. The log contains, among other information, a description of the RAES Action; an annotation as to the time of the RAES Action; a list of option classes affected by the particular RAES Action; and a brief summary of the reasons for each RAES Action.[4]

[4] In a telephone conversation between Tim Thompson, Assistant General Counsel, CBOE, and Steven G. Johnston, Special Counsel, Division of Market Regulation, Commission, August 16, 2000, the Exchange clarified various aspects of the

The CBOE also represents that it employs a number of methods for notifying Exchange members and the public about any RAES Actions. These methods include making an announcement over the trading floor public address system; generating a printer message and sending it to the floor operations of member firms; and attaching an ''F'' indicator (indicating that a ''fast market'' has been declared) to price and quote information for affected option classes. In short, the Exchange represents that the provisions of the CBOE rules regarding the operation of RAES and the procedures for ensuring proper application of the rules and methods employed to notify members and the public of a RAES Action indicate that the Exchange is dedicated to ensuring that both members and investors are well informed about the operation of RAES and the circumstances under which RAES may be unavailable.[5]

Proposed Rule

The CBOE is now proposing to add an Interpretation .08 to the RAES Rule. This change would codify the Exchange's current practice of documenting the reasons for taking any RAES Action. The following rules provide specific authority for taking such Action:

Fast Market Rule. CBOE Rule 6.6(a) states that ''[w]henever in the judgment of two Floor Officials, because of an influx of orders or other unusual conditions or circumstances, the interest of a fair and orderly market so require, those Floor Officials may declare the market in one or more options classes to be 'fast'.'' The Fast Market Rule further provides that if a market is declared fast, any two Floor Officials have authority to take various actions with respect to the class or classes of options declared to be in a fast market. These actions include, but are not limited to, turning off RAES in the applicable class or classes.

Temporary Deactivation of RAES by Post Director or Order Book Official. Rule 6.6(e) provides that a Post Director at a trading station (in the case of a Designated Primary Market maker (''DPM'') crowd) or an order Book Official (''OBO'') at a trading station (in the case of a non-DPM trading crowd) may turn off RAES for a class or classes of option contracts traded at that station for a period of time not to exceed five minutes if, because of an influx of orders or unusual conditions or circumstances in respect of such options or their underlying securities, the Post Director or OBO determines that such action is appropriate in the interest of maintaining a fair and orderly market.

Automatic Deactivation of RAES Due to News Announcements. Rule 6.6, Interpretation .01, codifies the Exchange's implementation of an automatic system that monitors news announcements (''Monitoring System'') pertaining to underlying stocks. Monitoring commences shortly before the close of trading in the primary markets for underlying stocks and continues as long as stock options continue to be traded. RAES executions are suspended in a particular class of stock options wherever the Monitoring System discovers that a news announcement has been made pertaining to the underlying stock. Two Floor Officials, who are immediately notified of the action, must consider whether to resume normal operation of RAES in the particular option class.

Deactivation of RAES by Control Room Due to Systems Malfunction. Under CBOE Rule 6.8, Interpretation .03, the senior person in charge of the Exchange's Control Room has authority to turn off RAES for a class of options if a system malfunction affects the Exchange's ability to disseminate or update market quotes.

Change in Eligible RAES Order Size. Under CBOE Rule 6.8, Interpretation .05, the Chairman of the appropriate Floor Procedure Committee or the Chairman's designee has the authority to increase the size of orders in one or more classes of options when the Chairman or his designee believes that such action is in the interest of alleviating a potential backlog of unexecuted orders.[6]

Switching Off ''RAES Reject Feature'' Due to Fast Market. CBOE Rule 6.8, Interpretation .02, provides that the ''RAES Reject Feature'' may be switched off for a particular class of options in circumstances where a fast market in the options class has been declared.

Switching Off ''RAES Reject Feature'' When Comparable Conditions Exist in Other Markets. Rule 6.8, Interpretation .02 provides that the ''RAES Reject Feature'' may be switched off where conditions comparable to a fast market exist in another market such that firm quote requirements do not apply.

The CBOE represents that whenever a RAES Action is taken pursuant to one of the rules above—whether by Floor Officials, through the operation of the Monitoring System, or by the senior person in the Exchange's Control Room—the RAES Action and the reasons therefore are recorded in the Control Room log. The CBOE rules may stipulate that a RAES Action be taken, *e.g.,* in the case of news announcements pertaining to underlying stocks. Other RAES Actions, however, are at the discretion of Floor Officials. The Exchange represents that Floor Officials may, for example, take a RAES Action when quotes disseminated by CBOE are inaccurate (this infrequently may occur due to problems with automatic price quotation systems or because of inaccurate underlying market quotes); the spread in an underlying security's quotation suddenly widens; an underlying quote becomes inverted; or there are extreme disparities between quotes disseminated by various exchanges.[7]

The proposed rule would codify the Exchange's requirement that reasons for taking any RAES Action be documented. The Exchange represents that such Action includes deactivating RAES or switching off the ''RAES Reject Feature''; changing the parameters of the eligible RAES order size; or otherwise operating RAES in other than the normal manner. The proposed rule would ensure that the Control Room log contains a historical record of the time any RAES Actions was taken, as well as the circumstances under which it was taken. The Exchange represents, therefore, that the proposed rule change is consistent with, and furthers the objectives of section 6(b)(5) of the Act[8] in that it is designed to remove impediments to a free and open market and protect investors and the public interst.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE represents that it does not believe the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

proposed rule change (''Telephone conversation with the CBOE'').

[5] Telephone conversation with CBOE.

[6] The Exchange has also filed a proposed rule change, with the Commission, (SR–CBOE–00–10), that would permit the Chairman or his designee to *decrease* the eligible RAES size in circumstances that the Exchange deems appropriate. The proposed rule change was published for public comment in Securities Exchange Act Release No. 428262 (May 30, 2000), 65 FR 36481 (June 8, 2000).

[7] Telephone conversation with the CBOE.

[8] 15 U.S.C. 78f(b)(5).

[9] Telephone conversation with the CBOE.

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)(i) [10] of the Act and Rule 19b–4(f)(1) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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–00–38 in the caption above and should be submitted by September 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22169 Filed 8–29–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43199; File No. SR–CHX–00–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Orders for Nasdaq/NM Securities and Amendment No. 1 Thereto

August 23, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice hereby is given that on June 9, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On August 16, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the proposed Rule Change

The Exchange proposes to amend the CHX rules governing automatic execution sequences and algorithms relating to the trading of Nasdaq/NM Securities on the Exchange. Specifically, the Exchange proposes to amend portions of Article XX, Rule 37. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specifies in Item IV below. The Exchange has prepared summaries, set forth in Section A, B and C below, of the most significant aspects of such statements.

2. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the CHX rules governing automatic execution sequences and algorithms relating to the trading of Nasdaq/NM Securities. Specifically, the Exchange proposes to amend portions of Article XX, Rule 37. The proposed amendments are intended to bring the Exchange's rules in line with the patterns and practices that currently exist in other markets with respect to the trading of Nasdaq/NM Securities.[4]

Article XX, Rule 37, describes among other things, the circumstances under which orders must be accepted and guaranteed an execution at the national best or offer (the ''BEST Rule''). Rule 37 also describes a specialist's ability to set a parameter (the auto-execution threshold) that identifies which of the orders guaranteed a fill under the BEST Rule will be automatically, not manually, executed. The proposed rule change would allow specialists to reduce the minimum auto-execution threshold from 1000 shares to 300 shares, but would not change specialists' obligations under the Best Rule.[5] In other words, specialists could choose to *automatically* execute only those orders of 300 shares or less, but would still be required to guarantee executions at the national best bid or offer (''NBBO'') for orders up to an including 1,000 shares. The amended rule also would permit specialists to choose to provide an enhanced execution guarantee to orders above 3000 shares by setting a new parameter called an ''enhanced liquidity quantity.'' Orders then would be automatically filled up to this enhanced liquidity quantity.[6]

The rule change also would provide new guidelines for Nasdaq/NM specialists seeking to switch from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19n–4.

[3] *See* Letter from Paul O'Kelly, Executive Vice President, CHX, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2000. (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified how specialists would utilize the proposed enhanced liquidity function, and deleted a portion of the proposed rule text that would have permitted a specialist to switch to manual execution mode in unusual trading situations after, among other things, seeking relief from a member of the Exchange. Under the amended version of the rule, a specialist must seek relief from two floor officials.

[4] *See* NASD Notices to Members 99–11 and 99–12 (February, 1999) (discussing NASD member firm order execution practices, particularly during periods of significant market volatility).

[5] The CHX represents that reduction of the minimum auto-execution threshold is intended to limit the exposure of Nasdaq/NM specialists in the case of Nasdaq/NM Securities. The Exchange anticipates, however, that for the majority of Nasdaq/NM Securities, specialists will voluntarily remain at the 1000-share auto-execution threshold.

[6] *See* Amendment No. 1, *supra* note 3.

automatic execution mode to a manual execution mode in the event of unusual trading situations. The amended rule, which mirrors guidelines issued recently by the NASD to its members, would provide that in the case of Nasdaq/NM Securities, that term ''unusual trading conditions'' includes the existence of large order imbalances and/or significant price volatility.[7] The rule would required that upon switching to manual execution mode based on the existence of unusual trading conditions, the specialist must: (1) Document the basis for election of manual execution mode; (2) disclose to its customers the differences in procedures from normal market conditions and the circumstances under which the specialist generally may activate manual execution mode; and (3) seek permission to switch to manual execution mode from two floor officials.[8]

The foregoing changes are intended to place the Exchange's rules in line with existing market pattern and practice relating to the trading of Nasdaq/NM Securities. The rule change thus necessarily contemplates certain distinctions between transactions in Dual Trading System issues and Nasdaq/NM issues. All such distinctions were approved by the Exchange's Rules Committee and its Committee on Floor Procedure, both of which are populated by specialists. Both committees concur that the proposed changes do not place specialists on unequal footing based on the type of issue traded, but rather merely reflect the distinctions between the markets for Dual Trading System issues and Nasdaq/NM issues.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[9] In particular, the proposed rule is consistent with section 6(b)(5)[10] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[7] *See* NASD Notice to Members 99–12, p. 2.

[8] *See* Amendment No. 1, *supra* note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–20 and should be submitted by September 20, 2000.

[11] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22170 Filed 8–29–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43202; File No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of the Nasdaq Order Display Facility and Modifications of the Nasdaq Trading Platform

August 23, 2000.

On October 1, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''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 establish the Nasdaq Order Display Facility and the Order Collector Facility, collectively referred to as the SuperMontage. On October 26, and October 29, 1999, respectively, Nasdaq filed Amendment Nos. 1 and 2 to the proposal.[3] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on December 6, 1999.[4] On March 16, 2000, Nasdaq filed Amendment No. 3 to the proposal.[5] On March 23, 2000, Nasdaq filed Amendment No. 4[6] to the proposal, which was published for comment in the **Federal Register** on March 30,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Thomas P. Moran, Assistant General Counsel, Office of the General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 26, 1999 (''Amendment No. 1''); and from John F. Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, Commission, dated October 29, 1999 (''Amendment No. 2'').

[4] *See* Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125.

[5] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission, dated March 15, 2000 (''Amendment No. 3'').

[6] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission, dated March 23, 2000 (''Amendment No. 4'').

2000.[7] On May 19, 2000, Nasdaq filed Amendment No. 5 to the proposal;[8] on July 7, 2000, Nasdaq filed Amendment No. 6;[9] and on August 8, 2000, Nasdaq filed Amendment No. 7.[10] Amendment Nos. 5, 6 and 7 were published in the **Federal Register** for comment on August 15, 2000.[11]

To give the public additional time to comment on Amendment Nos. 5, 6, and 7, the Commission is extending the comment period for Amendment Nos. 5, 6, and 7 to September 14, 2000. A copy of the proposed rule change, as amended, is available in the Commission's Public Reference Room in File No. SR–NASD–99–53.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 5, 6, and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–53 and should be submitted by September 14, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22114 Filed 8–29–00; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Securities Exchange Act Release No. 42573 (March 23, 2000), 65 FR 16981.

[8] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission, dated May 16, 2000 (''Amendment No. 5'').

[9] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission, dated July 6, 2000 (''Amendment No. 6'').

[10] *See* letter from Richard G. Ketchum, President, NASD, to Annette Nazareth, Director, Division, Commission, dated August 7, 2000 (''Amendment No. 7'').

[11] *See* Securities Exchange Act Release No. 43133 (August 10, 2000), 65 FR 49842.

DEPARTMENT OF STATE

[Public Notice 3401]

Culturally Significant Objects Imported for Exhibition Determinations: ''Amazons of the Avant-Garde: Alexandra Exter, Natalia Goncharova, Liubov Popova, Olga Rosanova, Varvara Stepanova and Nadezhda Udaltsova''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Amazons of the Avant-Garde: Alexandra Exter, Natalia Goncharova, Liubov Popova, Olga Rosanova, Varvara Stepanova and Nadezhda Udaltsova,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Museum in New York from on or about September 7, 2000 to on or about January 7, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 24, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–22180 Filed 8–29–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3402]

Culturally Significant Objects Imported for Exhibition Determinations: ''Eternal Egypt: Masterworks of Ancient Art from the British Museum''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Eternal Egypt: Masterworks of Ancient Art from the British Museum'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Toledo Museum of Art, Toledo, OH, from March 1, 2001 through May 27, 2001, the Wonders: Memphis International Cultural Series, Memphis, TN, from June 28, 2001 through October 21, 2001, the Brooklyn Museum of Art, Brooklyn, NY, from November 23, 2001 through February 24, 2002, the Nelson-Atkins Museum of Art, Kansas City, MO, from April 12, 2002 through July 7, 2002, the Minneapolis Institute of Arts, Minneapolis, MN, from December 20, 2002 through March 16, 2003, the Field Museum of Natural History, Chicago, IL, from April 26, 2003 through August 3, 2003, and the Walters Art Gallery, Baltimore, MD, from September 19, 2003 through January 4, 2004 is in the national interest. Public Notice of these Determinations are ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 24, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–22181 Filed 8–29–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 29, 2000.

ADDRESSES: *Send comments to:* Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 17, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12515–N	RSPA–2000–7772	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.101, 178.338–10, 178.338–13, 178.338–2(c), 178.338–6(a), 178.338–9(b).	To authorize the transportation in commerce of non-DOT specification portable tanks for use in transporting various Division 2.2 material. (Modes 1, 2.)
12516–N	RSPA–2000–7767	Poly-Coat Systems, Inc., Houston, TX.	49 CFR 107.503(b)(c), 172.102(c) (3)B15 & B23, 173.241; 173.242; 178.345–1;–2;–3;–4;–7;–14;–15;, 178.347–1;–2:, 178.348–1, 178.348–2, 180.405, 180.413(d).	To authorize the manufacture, marking and sale of non-DOT specification cargo tanks constructed of fiberglass reinforced plastic for use in transporting various classes of hazardous materials. (Mode 1.)
12517–N	RSPA–2000–7773	Cytec Industries Inc., Willow Island, WV.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain standing while connected without the physical presence of an unloader. (Mode 2.)
12518–N	RSPA–2000–7774	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.301(j)(1), 173.34(e)	To authorize an alternative retesting method of DOT3A, 3AA and 3AL and foreign cylinders for use in transporting liquefied or nonliquefied compressed gases or mixtures. (Modes 1, 3, 4, 5.)
12519–N	RSPA–2000–7775	Kingsford Manufacturing Company, Burnside, KY.	49 CFR 174.67(i)(j)	To authorize rail cars to remain stand while connected during unloading without the physical presence of an unloader. (Mode 2.)
12520–N	RSPA–2000–7776	ShipMate, Inc., Redondo Beach, CA.	49 CFR 173.301, 173.302, 173.306(a)(1).	To authorize the use of non-specification fiberboard boxes for certain life-saving devices where offered in transportation as air bag modules, not subjected to certain provisions of the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5.)
12521–N	RSPA–2000–7777	Airgas Inc., Madison, CT.	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders manufactured in the U.S. for export with valving and relief device requirements of the country that the cylinders will be exported to for use in transporting various compressed gases. (Mode 1.)
12525–N	RSPA–2000–7766	ICO Worldwide, Inc., Houston, TX.	49 CFR 172.406(f)	To authorize the transportation in commerce of a specially designed device (mobile pipe inspection unit pulled by a tractor) containing radioactive material, Type A, transported with obscured markings. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12526–N	RSPA–2000–7768	Aeronex, Inc., San Diego, IL.	49 CFR 173.212, 173.213	To authorize the manufacture, marking and sale of non-DOT specification cylinders for use in transporting Division 4.1 and 4.2 hazardous materials. (Modes 1, 2, 3, 4.)
12527–N	RSPA–2000–7765	Department of Defense (MTMTC) Falls Church, VA.	49 CFR 178, Subpart 504	To authorize the one-time transportation in commerce of DOT 5C stainless steel drums containing residue of corrosive liquid, n.o.s., Class 8 material, that were filled prior to performance oriented packaging (POP) requirements. (Mode 1.)

Note: In **Federal Register** Vol. 65, No. 143, Tuesday, July 25, 2000 on page 45827 ''List of applicants for exemptions'' 12481–N Trac Regulations Co., Inc., Mt. Vernon, NY ''Modes'' should have appeared as (Modes 1, 2, 4) and 12493–N Caroline Power & Light Co. ''Docket No.'' should have appeared as RSPA–00–7596.

[FR Doc. 00–22078 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before September 14, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 17, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
4661–M		Chemical Foote Corporation, Kings Mountain, NC (See Footnote 1)	4661
7060–M		Federal Express; Memphis, TN (See Footnote 2)	7060
8757–M		YZ Systems, Inc.; Conrole, TX (See Footnote 3)	8757
9347–M		PGI International; Houston, TX (See Footnote 4)	9347
11924–M	RSPA–1997–2744	UF Strainrite; Lewiston, ME (See Footnote 5)	11924
12399–M	RSPA–2000–6769	BOC Gasea; Murray Hill, NJ (See Footnote 6)	12399
12494–M	RSPA–2000–7597	American Reclamation Group, LLC; Anchorage, AK (See Footnote 7)	12494
12509–M	RSPA–2000–7789	Department of Defense (MTMC); Alexandria, VA (See Footnote 8)	12509

Footnotes:

[1] To modify the exemption to allow for alternative retest procedures for 4BA240 and 4BW240 cylinders; to allow for the transportation of Division 4.3 materials.

[2] To modify the exemption to waive the requirements to carry a copy of the exemption aboard each aircraft when transporting Class 7 materials.

[3] To modify the exemption to allow for the transportation of additional division 2.3 and class 3 materials in non-DOT specification stainless steel cylinders; editorial corrections to paragraph 6 of the exemption.

[4] To modify the exemption to change wording in the exemption to clarify the requirements for hydrostatic/pressure testing of the non-DOT specification stainless stell cylinders.

[5] To modify the exemption to authorize a UN 11HH2 intermediate bulk container as an outer packaging for lab pack applications transporting various classes of hazardous wastes.

[6] To modify the exemption to amend the equipment performance and test procedure language authorizing the use of certain DOT Specification 3AL cylinders for the transportation of compressed gases.

[7] To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 5.1 materials by cargo aircraft only when aircraft is the only means of reaching destination.

[8] To reissue the exemption originally issued on an emergency basis authorizing certain Division 4.2 materials to be stowed as palletized cargo in an under-deck forecastle location.

[FR Doc. 00–22079 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 12:00 noon on Saturday, September 30, 2000, in the conference room of the Corporation's Administration Building, 180 Andrews Street, Massena, NY. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 22, 2000, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on August 24, 2000.

Marc C. Owen,

Chief Counsel.

[FR Doc. 00–22095 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33912]

Wisconsin Central Ltd. and Fox Valley & Western Ltd.—Joint Relocation Project Exemption—Wisconsin Rapids, WI

On August 14, 2000, Wisconsin Central Ltd. (WCL) and Fox Valley & Western Ltd. (FVW) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain lines of railroad in Wisconsin Rapids, WI. The transaction was scheduled to be consummated no sooner than August 22, 2000.

WCL operates a line in Wisconsin Rapids that runs in a generally north-south orientation (WCL Line). The WCL Line is a portion of WCL's Valley Sub between Tomahawk, WI, and New Lisbon, WI. FVW operates a line in Wisconsin Rapids that runs in a generally east-west orientation (FVW Line). The FVW Line is a portion of FVW's Whitehall Sub between East Winona, WI, and Plover, WI. WCL and FVW currently share the use of an Industrial Spur currently owned by the City of Wisconsin Rapids. As part of this transaction FVW will acquire ownership of the Industrial Spur. WCL will continue to have rights to access the Industrial Spur after the transaction is consummated.[1]

In addition, under the joint relocation project, WCL and FVW propose the following transactions:

(1) FVW will abandon a line of railroad on the FVW Line, as it currently sits, from milepost 97.28 to milepost 96.15;

(2) FVW will use the Industrial Spur, which connects with the FVW Line at FVW milepost 97.28, to access the WCL Line, at WCL milepost 50.80, which will also become FVW milepost 96.71;

(3) WCL will grant FVW trackage rights to operate on the WCL Line from WCL milepost 50.80 to WCL milepost 49.85, where FVW trains will be able to access the FVW Line at FVW milepost 96.15.

The proposed joint relocation project will not disrupt service to shippers. Its purpose is to simplify rail operations in Wisconsin Rapids and accommodate efforts to reduce rail interference with vehicular traffic.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring STB Finance Docket No. 33912, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Esq., Wisconsin Central Ltd. and Fox Valley & Western Ltd., 6250 North River Road, Suite 9000, Rosemond, IL 60018.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 22, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–22034 Filed 8–29–00; 8:45 am]

BILLING CODE 4915–00–P

[1] According to the verified notice of exemption, the Union Pacific Railroad Company (UP) also has access rights to the Industrial Spur, which UP will retain when the transaction is completed.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20973]

Stagecoach Holdings PLC and Coach USA, Inc., et al.—Control—Midnight Sun Tours, Inc.

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Stagecoach Holdings PLC (Stagecoach) and its subsidiary, Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each

(collectively, applicants), filed an application under 49 U.S.C. 14303 to acquire control of Midnight Sun Tours, Inc. (Midnight Sun), a motor passenger carrier. Persons wishing to oppose this application must follow the rules under 49 CFR part 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by October 16, 2000. Applicants may file a reply by October 30, 2000. If no comments are filed by October 16, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20973 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland. With operations in several countries, Stagecoach is one of the world's largest providers of passenger transportation services. Stagecoach had annual revenues for the fiscal year ending April 30, 2000, of $3.29 billion. Coach is a Delaware corporation that currently controls over 80 motor passenger carriers.

Stagecoach and its subsidiaries currently control Coach,[1] its noncarrier regional management subsidiaries, and the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[2] In previous Board decisions, Coach management subsidiaries, including Coach USA Southeast, Inc., have obtained authority to control motor passenger carriers jointly with Coach.[3]

Applicants state that, on May 2, 2000, Coach purchased all of the stock of Tour USA International, Inc. (Tour USA), then a noncarrier. In a transaction approved by the Federal Motor Carrier Safety Administration, Tour USA simultaneously acquired federally-issued interstate motor passenger carrier operating authority held by an individual, Raimo Nikunen d/b/a Midnight Sun. Simultaneous with that acquisition, Coach placed the stock of Tour USA, the name of which corporation was subsequently changed to Midnight Sun, into an independent voting trust. The control transaction that is the subject of this application will not involve any further transfer of the federal operating authority held by Midnight Sun and will not entail any change in its operations.[4] Midnight Sun will also be jointly controlled by Coach USA Southeast, Inc.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transaction will not reduce competitive options, adversely impact fixed charges, or adversely impact the interests of the employees of Midnight Sun. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from the applicants' representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on October 16, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: August 22, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–21922 Filed 8–29–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Stagecoach controls Coach through various subsidiaries, namely, SUS 1 Limited, SUS 2 Limited, Stagecoach General Partnership, and SCH US Holdings Corp.

[2] *See Stagecoach Holdings PLC—Control—Coach USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

[3] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC–F–20931, *et al.* (STB served July 14, 1999).

[4] Midnight Sun is a Florida corporation. It holds federally-issued operating authority in Docket No. MC–213275, authorizing it to provide charter and special services between points in the United States. Midnight Sun operates a fleet of 28 buses and employs approximately 40 full-time employees. Its operations are composed primarily of charter services in Florida and between Florida and other states. For the 12-month period ending March 31, 2000, Midnight Sun and its predecessor owner earned operating revenues of approximately $2.8 million.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–64–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–64–93

(TD 8611), Conduit Arrangements Regulations (§§ 1.881–4 and 1.6038A–3).

DATES: Written comments should be received on or before October 30, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Conduit Arrangements Regulations.

OMB Number: 1545–1440.

Regulation Project Number: INTL–64–93.

Abstract: This regulation provides rules that permit the district director to recharacterize a financing arrangement as a conduit arrangement. The recharacterization will affect the amount of U.S. withholding tax due on financing transactions that are part of the financing arrangement. This regulation affects withholding agents and foreign investors who engage in multi-party financing arrangements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–22211 Filed 8–29–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of South Florida Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the South Florida Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Friday, September 22, 2000 and Saturday, September 23, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, September 22, 2000 from 6:00 pm to 9:00 pm and Saturday, September 23, 2000 from 9:00 am to 12:00 pm, in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 17, 2000.

M. Cathy Vanhorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–22212 Filed 8–29–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in West Des Moines, IA.

DATES: The meeting will be held Thursday, September 21, 2000, and Friday, September 22, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, September 21, 2000, from 9:00 a.m. to 4:00 p.m. and Friday, September 22, 2000, from 8:00 a.m. to 12:00 p.m. at the Hampton Inn, 7060 Lake Drive, West Des Moines, IA 50266. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Written comments can be submitted to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Introduction of new members, reports by the CAP sub-groups, presentation of taxpayer issues by individual members, discussion of issues, and CAP office report.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 17, 2000.

M. Cathy VanHorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–22213 Filed 8–29–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 65, No. 169

Wednesday, August 30, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–24]

Establishment of Class D Airspace; Oak Grove, NC

Correction

In Rule document 00–19853 appearing on page 48146 in the issue of Monday, August 7, 2000, make the following correction:

§71.1 [Corrected]

On page 48146, in the third column, in §71.1, under the heading ''**ASO NC D Oak Grove, NC [New]**'' in the 5th line, ''1,5000 feet'' should read ''1,500 feet''.

[FR Doc. C0–19853 Filed 8–29–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–24]

Amendment to Class E Airspace; Washington, MO

Correction

In rule document 00–20453 beginning on page 49192 in the issue of Friday, August 11, 2000, make the following correction:

§71.1 [Corrected]

On page 49193, in the third column, in *Paragraph 6005*, in the seventh line, ''Lat. 38°35′30″ N., long. 90°50′51″ W.'' should read ''Lat. 38°35′30″ N., long. 90°59′51″ W.''

[FR Doc. C0–20453 Filed 8–29–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
August 30, 2000

Part II

Department of Health and Human Services

Administration for Children and Families
45 CFR Parts 265 and 270

Bonus To Reward States for High Performance Under the TANF Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 265 and 270

RIN 0970–AB66

Bonus To Reward States for High Performance Under the TANF Program

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Administration for Children and Families is issuing final regulations to implement section 403(a)(4) of the Social Security Act. This provision authorizes bonuses to high performing States in meeting the purposes of the Temporary Assistance for Needy Families Block Grant (the TANF program). We will base the bonus awards in FY 2002 and beyond on work measures (substantially the same work measures currently in effect for the FY 1999–2001 awards); measures that support work and self-sufficiency related to: participation by low-income working families in the Food Stamp Program, participation of former TANF recipients in the Medicaid and State Children's Health Insurance Programs (SCHIP), and receipt of child care subsidies; and a measure related to family formation and stability (increase in the number of children in the State who reside in married couple families).

Bonus funds of up to $200 million each year were authorized for awards in fiscal years 1999 through 2003. This rule specifies a formula for allocating these funds in FY 2002 and FY 2003. The amount awarded to each high performing State may not exceed five percent of the State's family assistance grant.

Earlier, we issued program guidance covering bonus awards in FY 1999, FY 2000, and FY 2001. We published a Notice of Proposed Rulemaking to cover awards beginning in FY 2002 on December 6, 1999 (64 FR 68202).

In a related regulatory action, we are amending 45 CFR Part 265, the TANF Data Collection and Reporting Requirements, to reduce the burden of reporting data on Separate State Program-Maintenance of Effort (SSP–MOE) programs. This amendment will allow waivers of certain reporting requirements under limited circumstances.

EFFECTIVE DATES: These regulations are effective Ocotber 30, 2000 except for Section 270.4(e)(2)(ii), which requires an information collection that is not yet approved by OMB. We will publish an announcement in the **Federal Register** regarding the effective date of the additional data collection.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, Director, Division of Data Collection and Analysis, Office of Planning, Research and Evaluation, ACF, at 202–401–9297. Mr. Hurley's e-mail address is: shurley@acf.dhhs.gov.

This rule is accessible electronically via the Internet from the ACF Welfare Reform Home Page at http://www.acf.dhhs.gov/news/welfare.

SUPPLEMENTARY INFORMATION:

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I. Legislative Background

A. The Temporary Assistance for Needy Families Program

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, established the Temporary Assistance for Needy Families (TANF) program at title IV–A of the Social Security Act (the Act). TANF is a block grant program designed to make dramatic reforms in the nation's welfare system. Its focus is on moving recipients into work and turning welfare into a program of temporary assistance, preventing and reducing the incidence of out-of-wedlock births, and promoting stable two-parent families. Other key features of TANF include provisions that emphasize program accountability through financial penalties and rewards for high performance.

Title I also ''de-linked'' the eligibility for cash assistance and Medicaid benefits. Under the Medicaid amendments, a family's eligibility for Medicaid is based on whether the family would have been eligible under the State's prior AFDC plan.

TANF replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) that provided cash assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program.

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date. We published final regulations to implement the work, penalties, and data collection provisions of the TANF program in the **Federal Register** on April 12, 1999 (64 FR 17720). These rules became effective October 1, 1999. We also published a number of other related regulations, including rules covering annual reports of State child poverty rates in relation to the TANF program (Notice of Proposed Rulemaking published September 23, 1998 (63 FR 50837)) and bonuses to reward States for decreases in out-of-wedlock births (final rule published April 14, 1999 (64 FR 18484)).

The 1996 welfare reform law reflected widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care, health care, and other supports that they need to protect their children as they move from welfare to work.
- Child support enforcement programs should become tougher and more effective in securing support from noncustodial parents.
- Because many factors contribute to poverty and dependency, solutions to these problems should not be ''one size fits all.'' The system should allow States, Indian tribes, and localities to develop diverse and creative responses to these problems.
- The Federal government should place more emphasis on program results.

Under section 401(a)(1) of the Act, States (and certain Indian tribes) have the authority to use Federal welfare funds ''in any manner that is reasonably

calculated to accomplish the purpose'' of the new program. They have broad flexibility to set eligibility rules and decide what benefits are most appropriate.

In short, they have the opportunity to try new, far-reaching changes that enable them to respond more effectively to the needs of families within their own unique environments.

B. Summary of the Statutory Provisions Related to the High Performance Bonus

Section 403(a)(4) of the Act requires the Secretary to award bonuses to ''high performing States.'' (Indian tribes are not eligible for these bonuses.) The term ''high performing State'' is defined in section 403(a)(4) of the Act to mean a State that is most successful in achieving the purposes of the TANF program as specified in section 401(a) of the Act. These purposes are to—

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

Section 403(a)(4)(B) of the Act specifies that the bonus award for a fiscal year will be based on a State's performance in the previous fiscal year and may not exceed five percent of the State's family assistance grant.

Section 403(a)(4)(C) of the Act requires the Department to develop a formula for measuring State performance in consultation with the National Governors' Association (NGA) and the American Public Welfare Association, now known as the American Public Human Services Association (APHSA).

Section 403(a)(4)(D) of the Act requires the Secretary to use the formula developed to assign a score to each eligible State for the fiscal year preceding the bonus year and prescribe a performance threshold as the basis for awarding the bonus. Section 403(a)(4)(D) of the Act also specifies that $1 billion (or an average total of $200 million each year) will be awarded over five years, beginning in FY 1999.

II. High Performance Bonus Awards in FY 1999, FY 2000, and FY 2001

As we have done with all regulations related to the TANF program, we implemented a broad consultation strategy prior to our rulemaking. In addition, as required by section 403(a)(4)(C) of the Act, we consulted intensively with representatives of the NGA and the APHSA. We met with staff of these two national organizations as well as staff of the National Conference of State Legislatures (NCSL) and approximately 30 State representatives who participated by regularly scheduled conference calls over a period of approximately nine months.

We also consulted with a number of other audiences: researchers, data experts, and academics; other Federal and non-Federal agencies that had developed or were in the process of developing performance measures for their programs; and representatives of a broad range of non-profit, advocacy, and community-based programs.

We would have preferred to set the formula for all years through rulemaking. However, we were not able to conduct adequate consultations and complete a formal rulemaking process in order to advise States, in a timely way, how we would be assessing their performance (for both the performance year and the comparison year used to measure improvement) in FYs 1997–1998, FYs 1998–1999, and FYs 1999–2000, in order to make awards in FY 1999, FY 2000, and FY 2001. Therefore, we issued program guidance covering the first three award years without the benefit of a formal rulemaking process. (For the program guidance for the awards in FY 1999, see TANF–ACF–PI–98–1 and TANF–ACF–PI–98–5 (Form ACF 200, OMB #1970–0180); for the guidance for the FY 2000 awards, see TANF–ACF–PI–99–1; and for the guidance for the FY 2001 awards, see TANF–ACF–PI–99–5.)

The FY 1999 program guidance based the first-year bonus awards on four work measures, *i.e.*, the job entry rate, the success in the work force rate (this is a combination of the job retention rate and the earnings gain rate), and improvement in each of these measures. We have based the FY 2000 and FY 2001 bonus awards on similar work measures.

On December 4, 1999, the President announced three actions relating to the high performance bonus:

- The award of $200 million for the first-year bonus awards to 27 States with the best records in moving parents on welfare into jobs and subsequent success in the work force;
- The program guidance for the FY 2001 awards; and
- The publication of a Notice of Proposed Rulemaking (NPRM) covering awards in FY 2002 and beyond.

According to the reports filed by the 46 States competing for the first-year bonus, nationwide more than 1.3 million adults on welfare went to work in the one-year period between October 1, 1997, and September 30, 1998. Retention rates were also promising: 80 percent of those who had gotten jobs were still working three months later. The States also reported an average earnings increase of 23 percent for welfare recipients (some of whom were now former recipients) from $2,088 in the first quarter of employment to $2,571 in the third quarter.

The States ranked the highest in each category were Indiana (job entry), Minnesota (success in the work force, *i.e.*, job retention and earnings), Washington (biggest improvement in job entry), and Florida (biggest improvement in success in the work force).

The other States that received bonuses were: Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Nevada, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. Eleven States received bonuses in two categories, and one State, Minnesota, was successful in three.

In announcing these awards for FY 1999, we recognized that the award criteria did not necessarily identify all States that have implemented successful welfare reform strategies. For example, some States may have implemented exceptionally strong programs whose success was not captured by this award because of timing or the specific measures we used. In addition, although we awarded bonuses to the ten States with the highest scores in each measure, the performance scores for many other States were also high.

III. Summary of the Notice of Proposed Rulemaking

We faced a significant challenge in developing a performance measurement system for the new TANF program. Although there is considerable activity underway in both the public and private sectors, performance measurement is a field that is still evolving. Our aim in developing the bonus award system was to reflect outcomes based on the purposes of the Act, propose a system as simple as possible to understand and administer, and incorporate the best information available.

To provide context, in the NPRM, we included a discussion of some of the difficult and inter-related questions and issues with which we, and the groups

with which we had consulted, had struggled, *e.g.*, general approach questions, short-term versus long-term strategies, formula and distribution issues, and issues relating to the design of measures and the availability of data sources.

We also included a discussion of more specific issues related to TANF performance measurement, including issues around absolute performance and performance improvement and concerns about achieving a level playing field among States, and we discussed measures that we had considered and rejected. We also spoke about the difficulty of identifying appropriate measures without incurring new data collection responsibilities while relying, to the extent possible, on uniform, objective, and reliable State data; rewarding positive performance; and producing no unintended consequences.

Finally, as an additional encouragement to focus public comment on specific alternative approaches, we raised a series of questions on major sections of the proposed rule.

The consultations with NGA, APHSA, and others were very useful in helping us identify key issues, evaluate policy options, and develop both the program guidance for FY 1999, FY 2000, and FY 2001 and the Notice of Proposed Rulemaking. As a part of our consultations, NGA and APHSA developed a set of principles they believed should apply to a high performance bonus system. We found that these principles offered a positive framework for developing such a system and avoiding some major pitfalls. We also found these principles helpful as we addressed specific issues in developing the NPRM. The NGA/APHSA principles stated that a high performance bonus system should:

- Be simple, credible, quantifiable, understandable to the public, and consistent with the goals of the law;
- Focus on outcomes rather than process;
- Take varying State economic circumstances and policies into account and not impede the flexibility provided to States under Pub.L. 104–193;
- Minimize double jeopardy or reward. (For example, the law already provides bonuses for reducing out-of-wedlock births, a caseload reduction credit, and penalties and incentives related to child support enforcement and paternity establishment.);
- Avoid additional data collection requirements and costs and build on existing systems;
- Avoid unintended consequences;
- Focus on positive rather than negative measures; and
- Reflect the strong emphasis on employment and self-sufficiency in the Federal law and in the States' implementation of the law. This emphasis should influence the measures included in the system and the distribution of bonus funds.

We published a Notice of Proposed Rulemaking (NPRM) on December 6, 1999 (64 FR 68202). Since our initial consultations, we have held several additional formal and less formal discussions about TANF performance measures with States, State groups, and others. For example, on July 21, 1999, we invited States, advocates, researchers, and others to a day-long consultation on issues related to outcome and performance measurement related to the preparation of a ''Study and Report to Congress on Alternative Outcome Measures'' (section 107 of the Personal Responsibility and Work Opportunities Reconciliation Act). In addition, the core provisions of the NPRM were very similar to the measures, issues, and principles discussed in earlier consultations. Finally, we knew that the NPRM would provide an additional opportunity for public comment and believed it was important to move the regulations process forward.

In summary, the NPRM proposed to:

- Award bonuses beginning in FY 2002 based on four work measures (substantially the same work measures currently in use for FY 1999 and FY 2000 and specified for use in FY 2001);
- Award bonuses beginning in FY 2002 based on three non-work measures: one measure on family formation and family stability (increase in the number of children below 200 percent of poverty who reside in married couple families) and two measures that support work and self-sufficiency, *i.e.*, participation by low-income working families in the Food Stamp Program and participation of former TANF recipients in the Medicaid program and the State Children's Health Insurance Program (SCHIP);
- Use one of two possible alternative sets of data for the four work measures, including the National Directory of New Hires;
- Use the Census Bureau's decennial and annual demographic programs as the data sources for two of the three work support measures, *i.e.*, the measure on family formation and stability and the measure on participation in the Food Stamp Program;
- Measure performance on Medicaid/SCHIP participation, through State matches of TANF data with data on Medicaid/SCHIP enrollment;
- Award bonuses to the ten States with the highest scores in each measure;
- Specify an allocation of funds for each measure in FYs 2002 and FY 2003 (and beyond, if high performance bonus awards are subsequently authorized), under which we would award $140 million to the work measures and $60 million to the work support measures:
- Reiterate the requirement in § 265.3(d) of this chapter that, if a State wishes to receive a high performance bonus, it must file the information in Sections One and Three of the SSP-MOE Data Report; and
- Create an annual review process, as needed, if future modifications and technical changes are necessary.

We took this approach for several reasons. First, we believed that, given the primary focus of the TANF program on work, we should continue to focus the rewards to States for their efforts in this area. The funds allocation we proposed reflected the importance we placed on State performance directed towards work, *i.e.*, $140 million for work and $60 million for work support measures.

Second, potential new data sources appeared to be available with respect to both the proposed work measures and the work support measures: *i.e.*, the National Directory of New Hires would serve as a research data source and provide more comparable and reliable national work data; and data from the Census Bureau's decennial and annual demographic programs (*e.g.*, the Supplementary Census 2000 Survey and the American Community Survey) would provide data sources for two of the three proposed non-work measures.

In developing both the program guidance and the NPRM, the Department has been interested in utilizing a broad set of measures (*i.e.*, other than direct work measures) that more fully reflect other purposes of the TANF program. States, Congress, national organizations, and experts have also recommended the inclusion of other measures. During 1997 and 1998, we worked to develop other measures, but we were unable to identify measures for which we had reliable data sources.

Given the potential availability of the two new data sources, we proposed both work and work support measures. We strongly believe that Medicaid/SCHIP and Food Stamps are critical supports for many working families as they move towards self-sufficiency through employment. State performance to ensure that eligible families receive Food Stamps and Medicaid/SCHIP addresses two of the statutory purposes of the TANF program: Providing assistance to needy families so that

children may be cared for in their own homes and ending the dependence of needy parents on government benefits by promoting job preparation and work. Receipt of Medicaid/SCHIP and Food Stamps supports purpose two by helping make it possible for families to move off of welfare into employment, sustain that employment, and progress on the job to eventual full economic independence.

In addition, the non-work measures reflected our concern that the lives of children and families, particularly low-income children and families, should be a focus of attention within the TANF program. We also believe that strong families are one of the key factors in developing and sustaining high levels of individual competence and functioning in our complex society. Thus, we concluded that States should be rewarded for their efforts in addressing family formation and the other purposes of the Act noted above.

IV. Overview of the Public Comments

We received 130 comment letters, some with multiple signatures, from a wide range of national, State, and local entities and organizations, including: City and county governments; State human service agencies, and national organizations representing States, State legislatures, and State human service organizations; national and State children, family, and domestic violence advocacy and service organizations; national and local faith-based organizations; national, State, and local employment, housing, and legal advocacy organizations; national labor unions and a State labor agency; food and nutrition service and advocacy organizations; Members of Congress; a national foundation; and others.

Some of the 130 individual comment letters were similar or identical to the more than 300 identical notecards we received as a result of a letter-writing campaign organized by a broad-based national coalition monitoring the effects of welfare reform.

The major themes of the comments included the following:

- Most commenters supported the work measures, but a number made recommendations for substantive and technical changes.
- There was a division of opinion on the inclusion of the Food Stamp and Medicaid/SCHIP measures. For a number of reasons, States objected to the inclusion of these measures. Advocacy, service, and faith-based organizations strongly supported these measures, as did all of the Members of Congress who commented on the NPRM.
- Almost all commenters objected to the family formation and stability measure, although a few suggested modifications.
- A large number of commenters, primarily national advocacy organizations and three Members of Congress, recommended the addition of a new measure on child care.
- To a lesser extent, a number of organizations also recommended other new measures, including domestic violence measures and worker protection measures.
- Some commenters made recommendations for changes in the allocation of funds, although these comments did not present a consistent view. Many who supported the Medicaid/SCHIP and Food Stamp measures suggested substantial increases in the dollars for these measures and decreases in the dollars for the work measures, while national organizations representing States and State human service agencies recommended that all dollars go to the work measures.

A. Overview of Comments on the Work Measures

With a few exceptions, commenters considered the work measures of job entry, job retention, and earnings gain to be the appropriate measures for assessing State performance in moving TANF recipients from welfare to work and self-sufficiency. At the same time, we received a number of substantive and technical suggestions on how we should modify these measures, *e.g.*, establish a minimum level of earnings that would constitute employment; measure job retention and earnings gain over a longer time period; establish a separate measure of earnings gain (proposed as a combined job retention/earnings gain measure); measure performance improvement by percentage point change rather than percentage change; adjust performance scores by economic and demographic factors; and establish other threshold requirements, such as job placements above the poverty level. We address these comments in the section-by-section discussion below.

The States, their representative organizations, and other commenters expressed strong support for the proposed work measures (substantially the same work measures that are used for the high performance bonus awards for FYs 1999–2001). We considered a range of suggested changes, both substantive and technical, but, given the level of support for the proposed work measures, we made only a few technical changes in the final rule. We have changed the way we calculate performance improvement, *i.e.*, we will use the percentage point change rather than the percentage change. We have also removed the distinction on what kinds of subsidized jobs count under the work measures. In addition, we have added clarifying definitions in ¶270.2 and incorporated other technical changes in ¶270.5. We will consider adding an earnings threshold in the future, after further analysis and consultation with States and other interested individuals.

In the NPRM, we also proposed that States report one of two alternative sets of data—either a minimal set of identifying information on adult TANF recipients, which we would match against data from the National Directory of New Hires (NDNH) at the Federal level, or a more extensive set of work performance data. We proposed the use of the NDNH in response to concerns that States raised about access to out-of-State and Federal employment data during our initial consultations and implementation of the FY 1999 bonus awards. States and other commenters were strongly supportive of the use of the NDNH.

We agree that the use of the NDNH, matched with State data, will result in reduced burden for States and greater accuracy in implementing bonus awards. Therefore, in the final rule, we require States to report identifying information on adult TANF recipients that we will match with the NDNH data. We address these changes later in the section-by-section discussion of the rule.

B. Overview of Comments on the Food Stamp and Medicaid/SCHIP Measures

The proposed rules contained two measures that focused on State efforts to provide critical supports needed by low-income working families. One measure looked at improvements in the percentage of families leaving TANF who were enrolled in Medicaid or SCHIP six months later. The second measure looked at improvement in the rate of food stamp participation for certain low-income working families. These two proposals generated extensive comments, which were highly diverse in nature.

Because many commenters addressed these proposals together, and the comments on the two provisions were somewhat similar, this overview will address both provisions. However, there were also a variety of comments that spoke more directly to the separate proposals. You will find the discussion of these detailed and distinct comments

in the section-by-section analysis for §§ 270.4(d) and 270.4(e).

Comments: A significant majority of all commenters supported inclusion of the Medicaid/SCHIP and food stamp measures. Among the reasons cited were the importance of these benefits as work supports, particularly for families with entry-level employment; the negative consequences of the recent declines in these program caseloads; the ability of States to operate TANF in ways that facilitate food stamp and Medicaid participation by low-income families; and the value of encouraging States to take steps necessary to improve access. At the same time, a number of these commenters had suggestions for modifications to the proposals.

These two proposals also drew a significant negative response, primarily from State agencies and organizations representing States. While generally agreeing that these programs provide important supports for low-income families, commenters raised a variety of philosophical, programmatic, administrative, and equity objections to including these measures as part of the high performance bonus. Philosophically, and particularly for the food stamp measures, some commenters indicated that the measures were inconsistent with TANF purposes, promoting dependency rather than self-sufficiency. In addition, State agencies objected to being held accountable, under a TANF provision, for serving families that were beyond the reach of the TANF program and for complying with requirements in other Federal programs. In the case of food stamp participation, in particular, they also objected to being held accountable when they lacked control over many program rules, and they could not spend TANF funds to pay for activities that are reimbursable under the Food Stamp Act. They expressed concern about the adequacy of national data, the equity of looking at annual improvement only from FY 2000 forward, the equity of applying annual improvement measures when some States had made significant efforts to improve access prior to the measurement period, and a variety of other issues.

Response: We have decided to retain measures of Medicaid/SCHIP and food stamp participation in the final rule because we are committed to a high performance bonus system that rewards States not just for employment successes, but also for their efforts to support low-income families during their transitions. We believe these measures are consistent with, and support the statutory purposes of, TANF. By participating in Food Stamps and Medicaid or SCHIP, needy families receive the assistance they need to care for children in their homes (purpose one) and improve their chances of ending dependence on government benefits through work (purpose two). In fact, the bipartisan comments we received from Members of Congress on these measures uniformly supported their inclusion.

In response to the technical and substantive concerns raised by the States and others, we very carefully considered all the suggestions for how to improve the measures and looked for ways to address the States' concerns. As you will find in the section-by-section analysis, we have made a number of changes that respond to the concerns. For example, we have made it more explicit that States may choose whether to compete on the Food Stamp measure (consistent with our approach for all the measures), dropped the ''qualifying conditions'' for both the Food Stamp and Medicaid/SCHIP measures (*i.e.*, the threshold conditions that States had to meet in order to compete on these measures), added awards for absolute performance (not just improvement), and modified the improvement measure so that it is less biased towards States starting with a low level of performance in the comparison year.

Also, we recognize State concerns about being held accountable for activities that are outside of TANF. However:

- Unlike prior law, under TANF, all the key statutory provisions regarding goals and responsibilities refer to the ''State'' rather than the ''State agency''; the concept of ''single State agency'' is gone; and all notifications go to the chief executive officer of the State, not the State agency. Thus, the statutory language suggests that it is appropriate for the high performance bonus to look more broadly at State performance rather than TANF State agency performance.
- The legislative history suggests that Congress intended that Food Stamps and Medicaid remain as part of the safety net for needy families affected by the TANF changes and that Congress was referring to welfare benefits when it included statutory language about reducing dependency on government benefits. More specifically, Congress did not modify the entitlement nature of Food Stamps and Medicaid when it repealed the entitlement to cash assistance. Further, in enacting sections 1925 and 1931 of the Act, Congress clearly intended that needy families would maintain eligibility for Medicaid benefits on the same basis as prior law (or a less restrictive basis). Indeed, the fact that Congress did not budget any savings for either the Medicaid or Food Stamp programs as the result of TANF indicates that it did not anticipate the declines in program participation that occurred in both programs, and it suggests that Congress did not intend for the declines to happen.

Congressional interest in maintaining Food Stamps and Medicaid as part of the safety net is also suggested by the managers' statement which: (1) Refers to changes in the Food Stamp program, but does not suggest any TANF-related effects; (2) Refers to PRWORA as a ''fundamental reform of *welfare*'' that ''promotes work over *welfare*'' [emphasis added]; and (3) speaks to not abandoning ''those Americans who truly need a helping hand'' and guaranteeing that children ''will continue to receive the support they need.'' This interpretation of Congressional intent also corresponds with the consistent bipartisan support we received in comments from Members of Congress on this issue.

- The statutory purposes of the TANF program reflect a broad view of the program that goes beyond families that are needy and receiving cash assistance.
- In most cases, the same State and local agencies are administering the TANF, Medicaid, and Food Stamp programs (or the TANF agency is making Medicaid eligibility determinations on behalf of the Medicaid agency), and a single caseworker is often responsible for determining eligibility and benefits in the three programs. Thus, in the course of administering the TANF program, TANF program managers often have the opportunity to work on eliminating barriers that may be deterring clients from seeking or retaining Medicaid or food stamp benefits.

For example, they can work on clearing up client misunderstandings about the applicability of TANF requirements to other program benefits (*e.g.*, believing there are food stamp and Medicaid time limits); ensuring that families served by TANF diversion programs have the opportunity to apply immediately for other benefits to which they are entitled; and ensuring that applications and notices are clear about the expectations of each program, the reasons why particular benefits are denied or terminated, and an individual's rights to pursue other benefits. They can also work to provide office hours, office locations, and cultural and language accommodations that are responsive to client needs and to minimize administrative requirements, such as reporting and face-to-face interviews, that might

discourage participation by eligible families.

C. Overview of Comments on the Family Formation Measure

The proposed rules contained one non-work measure directed at the second and fourth statutory purposes of TANF—*i.e.,* to end the dependency of needy parents by promoting marriage and encouraging the formation and maintenance of two-parent families. More specifically, based on Census Bureau data, the NPRM proposed to allocate $20 million of the annual high performance bonus award to the 10 States with the largest increase in the percent of children below 200 percent of poverty who reside in two-parent families.

Comments: This proposal generated a significant number of comments and a largely negative reaction. While a few commenters commended our efforts to encourage State initiatives in this area, almost all who commented on this section expressed serious methodological and substantive concerns. Commenters noted that:

- States could earn awards based on bad outcomes, and thus the measure could have unintended negative effects.
- The measure fails to reward increases in marriage rates among families with higher incomes.
- Success in increasing marriage among single parents could inadvertently diminish a State's chances of receiving a bonus.
- This measure might also disadvantage those 10 or more States with State or local EITC programs.

Among the philosophical objections were:

- The measure's focus on marriage as the one acceptable form of ''two-parent'' families, noting that TANF purpose four refers to two-parent families, not marriage;
- The measure's failure to recognize noncustodial parents and a variety of less traditional family structures or to recognize the value of strengthening families through means other than marriage;
- The appropriateness of promoting marriage, *e.g.*, when there are contraindications such as domestic violence and substance abuse; and
- The appropriateness of engaging the government in decisions that are essentially personal and private.

In addition, some commenters questioned our preamble justification of the measure by referring to research findings that being raised in a single-parent family did not, in and of itself, negatively affect children.

Commenters also raised concerns about: (1) States being measured on something that seemed beyond their jurisdiction and control; (2) double jeopardy, *e.g.*, based on the proposed measure's similarity to the out-of-wedlock birth bonus; (3) the adequacy of Census data; and (4) the lack of a State option on whether to compete or not.

We received some suggestions for changes to this measure or for alternative measures related to family formation. Two organizations suggested we might establish a competition and award bonuses based on innovative policy initiatives and program demonstrations, and one State suggested we evaluate individual State descriptions of their own initiatives in this area. Commenters also suggested that we consider marriage rates for the entire State population and reward only ''noncoercive public education campaigns''; reward States for increasing the percentage of families receiving TANF cash assistance that are two-parent families; and add domestic violence provisions (either as threshold qualifying conditions or adjustments). A few commenters suggested, alternatively, that we could encourage States to reduce teen pregnancy.

Response: Since our earliest consultations with NGA, APHSA, NCSL, and the State representatives, we have actively explored the best means for incorporating non-work measures in order to encompass the broad statutory purposes of TANF. We also have had a number of conversations with Congressional staff, advocates, academics, and others to seek suggestions for such measures.

The proposed family formation measure in the NPRM reflected our best attempt to synthesize what we had heard and develop a measure that was feasible in light of the data that were available to us. While we recognized some of the measure's flaws, we hoped that proposal might either generate some useful suggestions for modifications that would improve it or present us with some viable alternatives.

We seriously considered the suggestion to establish a panel-based competitive process that would reward innovative initiatives or demonstrations. However, we did not include it in the final rule because the approach is inconsistent with the statutory language at section 403(a)(4)(C)–(E), which clearly expects us to employ quantitative measures. Also, this approach seemed to move us away from focusing on outcomes. We also thought that, without specific quantitative standards, it would be extremely difficult to implement a system that was sufficiently objective and fair to serve as the basis for awarding millions of dollars a year.

We are committed to the marriage and family formation purposes of the Act and believe it is important that these purposes, in addition to the work and work-related purposes, be addressed in the high performance bonus system. We also believe that it is important for us to help States focus on the non-work related purposes of the TANF statute. This measure is intended to provide an additional incentive for State activity and creativity in this area.

Thus, we have retained a family formation measure in the final rule similar, but not identical, to the measure proposed in the NPRM. We agree with commenters who recommended a broader population measure, i.e., that we measure the increase in the percent of all children in each State who reside in married couple families, not just low-income children, and we have made this change in the final rule. We believe that this will address commenters' concerns that including a ceiling could produce unintended consequences. However, because the measurement issues associated with family formation are more significant than those for the work and work support measures, we have reduced the funding allocation for this measure to $10 million. The final rule specifies that, in FY 2002 and beyond, we will award $10 million to the ten States with the greatest percentage point improvement in this measure. We have also made clear that States may choose to compete on this measure (we will rank only those States that indicate that they wish to compete), emphasizing our overall policy that participation in the high performance bonus system is voluntary.

We address comments more specifically in Part VI of the preamble regarding new § 270.4(f).

D. Recommendations for the Addition of New Measures

In the NPRM, we proposed not only specific measures for FY 2002 and beyond, but we discussed a number of other measures and data sources that we had considered but elected not to include for various reasons. We actively encouraged comments on all aspects of these measures and data sources and solicited recommendations for other measures and data sources that we might not have considered.

Over one-half of the letters we received and all of the notecards offered suggestions for the inclusion of a range of new bonus measures, either as a

substitute for the family formation measure or as additional measures. Commenters discussed some measures in detail; others were mentioned as suggestions for future development. Some of the recommendations for new measures, *e.g.*, child care, domestic violence, and child poverty, were among the measures we had discussed in the preamble to the NPRM, but had not included in the proposed rule.

We appreciate the number of thoughtful, well-reasoned comments we received regarding new measures, as well as the detailed analysis and other information provided in support of the commenters' recommendations. We also appreciate commenters' commitment to the success of welfare reform, the focus on work and self-sufficiency, and the importance of the well-being of families and children.

We gave considerable thought and attention to all recommendations for new measures, particularly where commenters had provided suggestions for further exploration and analysis. In evaluating measures and data sources, we based our deliberations on the NPRM and the final rule on the principles for a high performance bonus system developed by NGA and APHSA. We were at all times aware of the availability and sufficiency of data sources and wanted to avoid new data collection requirements and costs. We have been particularly aware of the issue of diversity among States and how that diversity might impact the design and implementation of a fair bonus system. Finally, we wanted the bonus system to remain as simple as possible to understand and administer and focus on (1) positive, not negative goals; and (2) outcomes, not processes.

In light of the comments we received, we have added a child care measure in the final rule. We strongly agree with commenters that child care subsidies or assistance are essential supports for low-income families and a critical part of a successful welfare reform program. A child care measure was the one measure that received the strongest and most consistent support from commenters. It was also the one for which commenters offered the most concrete suggestions about how we might specify the measure. Supporters included a broad array of national, State, and local advocacy and service organizations, Members of Congress, and a number of individual commenters.

We discuss the specific child care measure and respond to comments in Part VI of the preamble, ''Section-by-Section Discussion of the Rule and the Public Comments,'' § 270.4(e). Following the discussion of the child care measure, we also respond to commenters' recommendations for other new measures.

V. Summary of the Final Rule

We continue to be committed to a high performance bonus system that meets statutory requirements; reflects the principles developed by NGA and APHSA; is based on measurable outcomes using the most uniform, objective, and reliable data available; and offers States an opportunity to be recognized for their achievements in several areas.

In making changes to the final rule, we seriously considered all concerns and recommendations of the commenters. We appreciate the thoughtful and detailed letters we received, and we particularly appreciate the sense of common goals, expressed directly or indirectly in the letters, focusing on both effective implementation of the TANF program and the economic self-sufficiency and well-being of families and children.

We also paid attention to the concerns of States and State representative organizations, given the statutory provision on consultation with NGA and APHSA and the diversity of views on certain issues between States and a number of other commenters. We believe that the final rule takes a balanced approach to this diversity. We believe we have been responsive to, and incorporated a number of, State recommendations regarding ways of making the measures less burdensome and more workable; at the same time, we incorporated other provisions that were not generally supported by States but were supported by a very broad range of other commenters, *e.g.*, retaining the Food Stamp and the Medicaid/SCHIP measures and adding a measure on receipt of child care. We discuss these changes and respond to specific comments in the detailed section-by-section discussion below. Briefly, however, the final rule:

1. Awards bonuses to the ten States with the highest scores in the four work measures proposed in the NPRM, with minor modifications;
2. Awards bonuses to the three States with the highest scores on a new absolute measure and the seven States with the highest scores on the proposed improvement measure related to the participation by low-income working families in the Food Stamp Program;
3. Awards bonuses to the three States with the highest scores on a new absolute measure and to the seven States with the highest scores on the proposed improvement measure related to the participation of former TANF recipients in the Medicaid and SCHIP programs;
4. Awards bonuses to the ten States with the highest scores on a new child care measure and the family formation and stability improvement measure;
5. Bases competition on the family formation and stability measure on a universal population, *i.e.*, the increase in the percent of children in each State who reside in married couple families;
6. Makes more explicit that States may choose any of the measures on which they wish to compete in order to conform the language of the proposed Food Stamp and family formation measures to the overall policy that participation is voluntary;
7. Eliminates the qualifying conditions and qualifying options proposed in the NPRM for the Food Stamp and the Medicaid/SCHIP measures;
8. Allots $140 million to the work measures, $20 million each to the Food Stamp and Medicaid/SCHIP measures, and $10 million each to the child care and family formation measures;
9. Reduces the reporting burden on States by allowing waivers of the reporting requirements for SSP-MOE data under certain limited circumstances;
10. Reduces the reporting burden on those States competing on the work measures by requiring only minimal identifying information on adult TANF recipients that we will use to match with NDNH data at the Federal level;
11. Bases competition on the Food Stamp measure and the family formation and stability measure initially on the Census Bureau's Census 2000 Supplementary Survey and the Census Long-Form Transitional Database and, later, on data from the American Community Survey;
12. Bases competition on the Medicaid/SCHIP measure on State Medicaid/SCHIP data, matched with TANF data at the State level;
13. Bases competition in FY 2002 on the child care measure, which focuses on child care accessibility (the percent of CCDF-eligible children receiving services), affordability (assessed family co-payments), and child care quality (based on State reimbursement rates) using data States currently report to us under the CCDF program;
14. Specifies the dates by which States must report data and other information to us;
15. Clarifies the use of the bonus funds; and
16. Makes technical and clarifying changes in the work measures, *e.g.*, changes the way we calculate the

improvement measures from percentage change to percentage point change and drops the requirement that States identify those persons whose jobs are fully subsidized.

VI. Section-by-Section Discussion of the Final Rule and the Public Comments

Section 270.1 What Does This Part Cover?

We received no comments on this section and have made no changes to it.

Section 270.2 What Definitions Apply to This Part?

This section of the NPRM proposed a number of definitions used in this part.

We have made several changes in this section: (1) We have updated the acronym and name of the CHIP (Children's Health Insurance Program) to SCHIP (State Children's Health Insurance Program); (2) we have defined the acronym ''CCDF'' as the Child Care and Development Fund; (3) we have added the words ''or the calendar year'' in the definition of ''performance year'' to indicate that, for the Food Stamp measure and the family formation measure, we will be comparing State performance based on a calendar year rather than a fiscal year; (4) we have moved the definition of ''improvement rate'' as proposed in § 270.5(c) of the NPRM to this section; and (5) we have added a definition of ''absolute rate.'' We have added these last two definitions in this section for clarity and because these terms now apply to both the work measures and the work support measures.

We received no comments on the definition of ''improvement rate,'' but we want to call attention to one change we have made in this definition and explain how it affects our ranking of States and making bonus awards. In the final rule, ''Improvement rate'' means the positive percentage point change between the absolute rate of performance in the performance year and the comparison year, except for the calculation and ranking of States on the increase in success in the work force measure in § 270.5(a)(4). The definition proposed in the NPRM did not include an exception and would have prohibited us from considering a State with a negative score in one sub-measure in the increase in the success in the work force measure in the ranking process. For example, a State may have a negative score on one sub-measure (*e.g.*, job retention) and a positive score on the other sub-measure (*e.g.*, earnings gain). We did not want to exclude that State from the competition for a bonus. We have made corresponding changes in § 270.5.

We received the following comments on this section:

Comment: One State asked that we add definitions for the terms ''TANF eligible,'' ''employed recipient,'' and ''leaving TANF assistance,'' as these terms have different meanings across States.

Response: We have not added definitions of these terms for several reasons. First, the term ''TANF eligible'' was used in the NPRM to describe qualifying conditions for the Food Stamp measure. These conditions have been dropped in the final rule. Second, the term ''leaving TANF assistance'' is used in the description of the Medicaid/SCHIP measure, but it is clear in the language of § 270.4(d) that this term refers to persons no longer receiving TANF assistance. Finally, the term ''employed recipient'' is used in describing components of several of the work measures. We believe it is clear that employment connotes earnings or wages. Since we have not established a minimum earnings threshold, we believe it is not necessary to define this term.

Comment: In commenting specifically on the definition of the terms ''comparison year,'' ''fiscal year,'' and ''performance year,'' one commenter was concerned that these definitions, combined with the proposed work measures, resulted in a bonus system that penalizes those States that may have focused on these activities well before the first comparison year. For example, these definitions and our other proposals would penalize States that have achieved significant increases in health care coverage between the beginning of their welfare program and the comparison year, while providing an advantage to States that have started more slowly. (This is an example of the ''level playing field'' issue on which we received a number of comments.)

This commenter recommended that we should base the health coverage measure on the States' overall efforts beginning with the effective date of the TANF program.

Response: The ''level playing field'' issue is one that we and others have struggled with since the beginning of our consultations on establishing a high performance bonus system. We agree that the system in place for the awards in FYs 1999 through 2001 and specified in this final rule would not completely address the concerns of, and may disadvantage, some strong performers who initiated their welfare reform programs prior to FY 1997.

However, we have made no change in the definitions in response to this comment. The statute specifies the ''bonus years'' for purposes of these awards as FYs 1999 through 2003, and we based bonus awards in FY 1999 on a State's performance in FYs 1997 and 1998. We did not believe that measuring performance in earlier years was responsive to the requirement that awards reflect a State's performance under, and following the establishment of, the TANF program.

Nevertheless, we have made two changes in the final rule that may help address concerns regarding a ''level playing field,'' *i.e.*, we have added an absolute outcome measure in both the Food Stamp and the Medicaid/SCHIP measures and we have changed the way we calculate the improvement measure from percentage to percentage point change. (See § 270.4(c) and (d).)

Section 270.3 What Is the Annual Maximum Amount We Will Award and the Maximum Amount That a State Can Receive Each Year?

In accordance with section 403(a)(4)(B)(ii) of the Act, we proposed that the amount payable to a State in a given bonus year will not exceed five percent of the State's family assistance grant (SFAG). We also published, as an Appendix to the NPRM, a list of the total amount of each State's SFAG and the amount equal to five percent of each State's SFAG.

Comment: One State asked that we clarify whether the SFAG is the ''present grant amount'' or the grant amount when the bonuses are awarded.

Response: The statute and the TANF regulations (45 CFR 260.30) define the State family assistance grant (SFAG) as the amount of the basic block grant allocated to each eligible State under the formula at section 403(a)(1) of the Act. Thus, other TANF funds that a State may receive under section 403, *e.g.*, bonus funds, contingency funds, and supplemental funds, are not a part of the SFAG. Neither would we reduce a State's bonus award based on reductions to the ''SFAG payable'' due to a penalty against the State. The amount of the State's SFAG as published in the Appendix to the NPRM is accurate and remains in effect until the statute changes.

Section 270.4 On What Measures Will We Base the Bonus Awards?

In the NPRM, we proposed in paragraph (a) of this section to award bonuses based on four work measures and three ''non-work'' measures. We proposed the work measures in paragraph (b) of this section. As we said

in the overview of comments on the work measures above, there was strong support for these measures, although we received a number of suggestions for substantive modifications and technical changes. We address these suggestions in the discussion of § 270.5 and § 270.6 below.

Section 270.4(c) Measure of Participation by Low-Income Working Households in the Food Stamp Program

Under the proposed food stamp outcome measure, we would measure the improvement in the number of low-income working families (*i.e.*, families with children under the age of 18 who have an income of less than 130 percent of poverty and earnings equal to at least half-time, full-year employment at the minimum wage) receiving food stamps as a percentage of the number of low-income working families in the State, using the same definition. For any given year, we would compare a State's performance on the measure with its performance in the previous year, beginning with a comparison of calendar year (CY) 2000 to CY 2001. We would rank all States and would award bonuses to the 10 States with the greatest percentage improvement in this measure. We proposed to allocate $20 million annually for the food stamp measure.

We also proposed that, in order to compete on the food stamp outcome measure, a State must be in compliance with four qualifying conditions. The qualifying conditions proposed in the rule were the following:

(1) The State agency has issued policy instructions or regulations clearly specifying that, at first contact with the State agency which administers the Food Stamp Program, individuals must be informed of the opportunity to apply for food stamps in accordance with 7 CFR 273.2(c)(1).

(2) The State agency has issued policy instructions or regulations clearly specifying that food stamp application forms are to be readily accessible and available upon request, in accordance with 7 CFR 273.2(c)(3).

(3) As evidenced through policy instructions, regulations, and administrative reviews, the State agency is complying with application processing time frames and expedited service rules, as required by 7 CFR 273.2(g).

(4) As evidenced through policy instructions, regulations, and administrative reviews, the State agency has taken steps to prevent inappropriate denials and terminations of eligible food stamp participants who have lost TANF eligibility, in accordance with 7 CFR 273.12(f). Since food stamp eligibility is not based on TANF eligibility, States may not deny food stamp eligibility to a family or family member simply because the family is ineligible for TANF.

We proposed that the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture would determine each State's compliance with the qualifying conditions, as a part of its ongoing oversight of the Food Stamp Program.

As noted earlier in this preamble, the majority of total comments received on the food stamp outcome measure supported the proposed measure. However, for a number of reasons, almost all of the State commenters opposed the inclusion of the food stamp outcome measure. We have seriously considered all comments, particularly the concerns of States. We believe that we have addressed many, though not all, of their concerns in the final rule. We have also accepted recommendations made by other commenters.

Briefly, we have made the following changes in § 270.4(c) of the final rule:

(1) Added an absolute performance measure;

(2) Changed the award structure to grant bonuses to the three States that rank the highest on the absolute performance measure and the seven States that rank the highest on the improvement measure;

(3) Changed the measured unit from ''families'' to ''households with children'';

(4) Revised the improvement component to measure the percentage point improvement, rather than the percentage improvement, in the participation of low-income working households with children;

(5) Dropped the qualifying conditions;

(6) Made more explicit that competition on the measure is optional for States, to conform to the overall bonus policy that participation is voluntary; and

(7) Clarified how we will deal with tie scores.

We address the specific comments below.

Comments: Some commenters claimed that awarding TANF high performance bonus funds based on a measure of food stamp performance exceeds the statutory authority of TANF. Others argued that the food stamp measure encourages continued dependence on government benefits and, thus, runs contrary to the second goal of the TANF program, which is to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.

Response: We disagree with the commenters who believe that awarding TANF bonus funds based on State performance in the Food Stamp Program exceeds the statutory authority of TANF. Section 403(a)(4) of the Act requires the Secretary of the Department of Health and Human Services to award bonuses to those States that are most successful in achieving the goals and purposes of the TANF program. As noted earlier in the preamble, we believe that State performance to ensure that eligible working families receive food stamps addresses two of the statutory goals of the TANF program: providing assistance to needy families so that children may be cared for in their own homes; and ending the dependence of needy parents on government benefits by promoting job preparation and work.

We recognize that a number of commenters felt that, far from ending the dependence of needy parents on government benefits, the food stamp outcome measure encourages dependence by encouraging States to assist working families to participate in the Food Stamp Program. We strongly disagree with this viewpoint. Ending the dependence of needy parents on government assistance requires successfully transitioning parents from welfare to work. Key to that successful transition is the Food Stamp Program. Food stamps provide needed nutritional benefits during that period when families are working but are not earning at the level that will enable them to achieve full self-sufficiency. In some cases, working parents may only be able to keep their jobs and feed their families because food stamps help them make ends meet.

Comments: Some commenters opposed the food stamp outcome measure on the grounds that it does not take into account many factors that have contributed to the decline in food stamp participation, including policy changes that have affected the eligibility of single adults and non-citizens.

Response: We recognize that many factors combined to cause the significant decrease in program participation experienced since 1996, not the least of which were a strong economy and new food stamp requirements that barred many non-citizens from participating in the program and imposed work requirements on able-bodied, childless adults. However, other factors also appear to be at work. Between 1995 and 1998, food stamp participation fell three times as much as the fall in the number

of poor people, suggesting that many poor families have left the program despite their continuing eligibility. In 1999, participation continued to decline, although the rate of decline has slowed.

Traditionally, the program has had lower participation rates among eligible low-income families who are not receiving cash assistance. This means that as more families move from cash assistance to work, we have begun to see a dramatic decline in the food stamp rolls even though many of these low-income families remain eligible for food stamps. The food stamp outcome measure is designed to provide States with an incentive to implement policies and procedures necessary to improve access to the program among working families.

Comments: Some commenters felt that the food stamp measure effectively holds States responsible for overcoming obstacles to program participation that are established in Federal law and regulation. The commenters noted that strict eligibility requirements in the Food Stamp Program and Federal policies in effect restrict the number of families who can receive food stamps. The commenters believe that if the Administration is committed to expanding food stamp participation, it should take the necessary steps to amend the law and relax Federal regulations. They recommended relaxing reporting and verification requirements for working families, improving conformity between food stamp and TANF rules, and simplifying rules related to self-employment.

Response: We recognize that complex Federal laws and regulations, as well as State policies and procedures, can prove to be a barrier to Food Stamp Program participation among working families. For their part, the United States Department of Agriculture (USDA) and the Food and Nutrition Service (FNS) have taken steps to simplify program rules and reduce administrative burdens on working families. In July 1999, the President announced a series of actions to help ensure working families' access to food stamps. These actions included: (1) Expanding categorical eligibility rules to make it easier for working families to own a car and still be eligible for food stamps; (2) so long as the household's eligibility is redetermined at least every six months, providing States the option to allow working households to report changes in their circumstances on a quarterly basis, report only changes in income of $100 or more a month, and report only when there is a change in a job, hours of work, or wage rate; and (3) raising the quality control threshold that establishes when a case is considered to be in error from $5 to $25.

In addition, in a recently published proposed rule, Noncitizen Eligibility and Certification Provisions of Pub. L. 104–193, as amended by Public Laws 104–208, 105–33, and 105–185, (65 FR 10855), FNS proposed a number of provisions for further simplifying program rules and expanding State flexibility. The rule proposed the following: (1) Simplifying current verification requirements by removing overly prescriptive requirements for use of specific documents for verification; (2) allowing for the use of a simplified method of calculating self-employment expenses for certain specified types of businesses; and (3) establishing the ground rules for implementing the Simplified Food Stamp Program, under which States may determine food stamp benefit levels for households receiving TANF by using food stamp requirements, TANF rules, or a combination of the two.

In regard to achieving better conformity between TANF and food stamps, FNS has tried to provide States with as much flexibility as possible in conforming food stamp rules to TANF requirements without compromising the food security of the low-income population the program serves. State efforts to conform food stamp rules with TANF rules need to recognize that the Food Stamp Program serves a large and diverse range of people, two-thirds of whom do not receive TANF assistance, *i.e.*, primarily cash assistance.

Comments: Some commenters believed that food stamp participation is not the appropriate variable for measuring a State's performance, given the fact that TANF benefit amounts and income disregards vary by State. In States with liberal disregards, a family's earnings plus TANF benefits may cause ineligibility for food stamps or reduce the food stamp benefit level to such a low amount that the family may conclude that it is not worth the effort to comply with certification requirements. Other commenters felt that the measure would reward States that place clients in low paying jobs or otherwise keep families below 130 percent of the Federal poverty level so that they may continue to qualify for food stamps.

Response: We do not believe that the food stamp outcome measure disadvantages States with more liberal TANF programs. First, most State TANF assistance programs do not have eligibility standards that exceed 130 percent of poverty. Second, if a State has more liberal disregards, food stamp eligible working households with children are more likely to continue receiving TANF assistance, and thus are more likely than other working households to be participating on the Food Stamp Program.

Also, States should be focused on improving the food stamp participation rate among all low-income, working households with children, not just those receiving TANF assistance. There are many more low-income working households with children who are eligible for food stamps than there are TANF participants. Those States that will do the best in the improvement measure are not those who improve the food stamp participation rate the most among current or former recipients of TANF assistance. Rather, it will be those States that increase the food stamp participation rate the most among all low-income working households with children. Similarly, the absolute measure will reward States that serve the greatest percentage of low-income working households with children overall, not the most current or former TANF recipients.

Comments: Some commenters felt that the food stamp outcome measure failed to take into account the restrictive rules of the Food Stamp Program. They noted that the only measure being used is income below 130 percent of poverty, but income is not the only factor that must be measured in actually determining eligibility for the Food Stamp Program. The asset rules alone will make many low-income families ineligible.

Response: Limitations in the Census Bureau data that we will use to measure States' performances on the food stamp outcome measure make it difficult to screen households for food stamp eligibility factors other than income. However, we do not believe that using income below 130 percent of poverty as a proxy for food stamp eligibility disadvantages any State in the bonus competition. While it is true that, because of the food stamp asset test and non-financial eligibility tests, a State's ratio of working families participating in the Food Stamp Program to working families that are income eligible for the program may appear lower than it, in fact, is, this will be true for every State because the Food Stamp Program employs national eligibility criteria. Thus, no State should be disadvantaged in comparison to other States or to itself over time.

Also, States can close the gap between the number of households that are only income eligible for food stamps and those that are actually eligible for the program by taking advantage of the

expanded categorical eligibility rules announced as part of the President's July 14, 1999 food stamp initiative. The new policy allows States to use their more generous TANF assets tests, including their vehicle tests, rather than the Food Stamp Program asset limits, in determining food stamp eligibility for families receiving or authorized to receive TANF benefits.

Comments: Several commenters noted that while the food stamp outcome measure gauges the TANF program's effectiveness in enrolling working poor families in the Food Stamp Program, States are prohibited by law from spending TANF and MOE money for food stamp outreach. These commenters felt that it is unreasonable to hold a TANF program accountable for increases or decreases in the food stamp caseload when States cannot use TANF funds for food stamp outreach.

Response: Section 16(k)(5) of the Food Stamp Act of 1977, as amended, prohibits States from using TANF or MOE funds to pay for food stamp costs that are eligible for reimbursement under the Food Stamp Act. This includes the cost of activities to inform low-income households about the availability, eligibility requirements, application procedures and benefits of the Food Stamp Program. However, although States may not spend TANF, or MOE, money on these activities, they may use other State money to fund these activities, and FNS will match the expenditures at the 50:50 rate. In addition, there are certain activities related to increasing food stamp participation that are not reimbursable under the Food Stamp Act and for which States can use TANF or MOE funds. These activities include recruiting individuals to participate in the Food Stamp Program, providing transportation to certification and issuance offices, and acting as an authorized representative.

Comments: Several commenters noted that while the food stamp measure refers to ''families,'' food stamp receipt is by household, which may or may not match the conventional (TANF) definition of family.

Response: We recognize that looking at families in the food stamp measures makes the measures somewhat incongruous with the Food Stamp Program, in which receipt is based on ''household.'' A family, defined as parent and child, may not match the food stamp household, which would include anyone that lives with the family and purchases and prepares meals with them.

In the proposed food stamp outcome measure, a family that is included in the count of working families in a State that are income eligible for food stamps may not, because of the presence of another person in the home who purchases and prepares meals with the family, be in fact eligible for food stamps. This incongruity could cause the ratio of working families participating in the Food Stamp Program to families that are income eligible for the program in a State to appear lower than it in fact is.

Because this would be true in all States, we do not believe that this incongruity creates a bias in favor of any State in the competition or affects over time comparisons within States. However, in the final rule, we have changed the measured unit in the food stamp measures from families to households in order to better align the measure with the Food Stamp Program. We have revised the proposed regulations at § 270.4(c) to indicate that we will measure the number of low-income working households with children participating in the Food Stamp Program as a percentage of the number of low-income working households with children in the State.

Comments: One commenter objected that the food stamp outcome measure effectively restores repealed Food Stamp Program client service requirements. The commenter noted that to effectively compete for a high-performance bonus under the Food Stamp Program measure, States must restore many client service requirements that were repealed by PRWORA. The commenter believed that HHS was using financial incentives as a trade-off for the flexibility and independence to operate local food stamp offices that was granted States under PRWORA.

Response: In replacing specific client service requirements with the broad requirement that States establish procedures that best serve households, PRWORA directed States to take into account households with special needs. Included in this special needs category are working families. Therefore, beyond any desire to compete for TANF bonus funds, States have a responsibility to make the Food Stamp Program accessible to working families by implementing practices such as holding evening office hours and increasing the availability of application sites. Awarding TANF bonus funds based on State performance in serving working families, while primarily a recognition of the importance of food stamps to the overall success of welfare reform, is a means of providing States with an additional incentive to implement practices that will improve enrollment among a needy, yet difficult-to-serve, population.

Comments: Some commenters believed that the food stamp measure was improperly designed and suggested alternative measures. A number of commenters felt that the proposed measure did not address the real issue—that families leaving the TANF rolls are not properly referred to and assisted in accessing food stamps, even though they may still be eligible. These commenters suggested that we re-design the measure to track food stamp receipt among former TANF recipients for the month following the end of TANF receipt to ensure continual access to the Food Stamp Program. Other commenters criticized the measure for not giving States credit for cases in which a family leaving TANF earns too much to qualify for food stamps.

Response: Our interest in improving participation in the Food Stamp Program extends to all low-income, working families, not just those served by the TANF program. The majority of low-income working families that are eligible for food stamps have never participated in TANF. Also, many States refer eligible TANF recipients into diversion programs that provide them needed services and keep them off of the TANF program. The ability of these households to support themselves is vital to the success of welfare reform. Without food stamps, many of these families are in danger of going hungry; this could impact their ability to hold a job and to remain off of government cash assistance. The food stamp outcome measure provides States with an incentive to ensure that eligible former TANF recipients are properly referred to and assisted in obtaining food stamps. At the same time, it provides States with an incentive to improve access to the program for low-income, working families who have never been served by the TANF program, but whose ability to achieve and sustain self-sufficiency is nevertheless critical to the success of welfare reform.

Comments: Several commenters suggested that we should expand the food stamp measure to evaluate the improvement in participation among all low-income families in a State, not just those who are working.

Response: While we recognize the importance of food stamps as a support for all low-income households, we believe that we should continue to focus the food stamp outcome measure on working poor families, given the focus on work in the TANF statute, including the second purpose of the program. Participation in the Food Stamp Program remains especially low among the working poor; in 1997, only 59

percent of individuals in households with employed adults who were eligible for food stamp benefits participated in the Food Stamp Program, compared to a participation rate of 63 percent overall. If welfare reform is to be a lasting success, States must increase the participation rate of low-income working families significantly. By restricting the food stamp outcome measure to working households with children, we can help States focus on improving access to food stamps for this hard-to-serve population. Thus, we have not made a change to the proposed regulation as a result of these comments.

Comments: One commenter felt that it was inappropriate to limit bonuses to the top 10 States. The commenter recommended that we expand the number of States who could benefit from the performance bonus.

Response: The bonuses are intended to reward those States that are the most successful in achieving the goals and purposes of the TANF program. We chose to limit the bonuses to the top 10 States in each performance measure in order to emphasize that the awards recognize the highest performance among States. Increasing the number of States eligible for a bonus under each measure would dilute the significance of the awards. For this reason, we have not made changes to the proposed rule.

Comments: A number of commenters noted that the proposed food stamp performance measure, because it is a measure of improvement only, disadvantages States that are already doing a good job of encouraging Food Stamp Program participation among low-income working families. Some commenters requested that we expand the measure to recognize the progress made by States prior to the first year of the bonus awards and the progress made in prior years as the bonus moves from year to year. Other commenters suggested that we include a measure of absolute performance as well as an improvement measure. These commenters further suggested that we rank States separately on both the absolute and improvement measures and award bonuses to the top five States in each category.

Response: We recognize the importance of rewarding States for both absolute performance and improvement in each high performance bonus category. Awarding bonuses for both absolute performance and improvement provides a way to ensure a more objective and fair competition, by allowing States that start from different baselines a reasonable chance to compete successfully for bonus money. Each of the four work measures has an absolute and improvement component. However, in the case of the food stamp outcome measure, because only $20 million is being allocated for the measure, we felt that dividing the bonus among 20 winners, 10 for the best performance and 10 for the most improved, would too greatly diminish the incentive the bonus would provide. We opted in the proposed rule, therefore, to make the food stamp outcome measure only a measure of improvement. Given the low participation rate of poor working families on the Food Stamp Program, we felt that it was more important to reward States that improve program access to this group than to reward States who are already doing a good job of serving them.

Based on the comments we have received on the provision, however, we have decided to modify the food stamp outcome measure by adding a measure of absolute performance. This measure is designed to reward those States that, in a given year, demonstrate the very best performance in serving low-income working families. Under the outcome measure in the final rule, we will award $6 million in bonus funds to the three States that serve the highest percentage of low-income working households with children in the current year (the absolute measure) and award $14 million to the seven States that show the most improvement in performance from the previous year to the current year. We chose to reward more States for improving performance than for maintaining high overall performance because we wish to keep the emphasis of the bonus on improving service to low-income working households with children. We believe that this provision offers an effective compromise between rewarding States that currently do the best job of serving low-income working families and providing an incentive for other States to improve their performance. We have revised the proposed regulations at § 270.4(c) to reflect these changes.

Comments: Several commenters suggested that we revise the food stamp measure to measure the percentage point improvement, rather than the percentage improvement, in the participation of low-income working families. They noted that under the proposed measure, we would rank a State that increases food stamp participation from 5 percent to 10 percent (100 percent improvement) higher than a State that increases participation from 30 to 45 percent (50 percent improvement).

Response: We agree with the commenters that a fairer measure of improvement would be to measure the percentage point improvement rather than the percentage improvement in the participation of low-income working families. Therefore, we are modifying the food stamp improvement measure at § 270.4(c) to reflect this change. This change is consistent with the change we made in the work improvement measure in § 270.6.

Comments: A commenter noted that the food stamp performance measure needs to have a method for dealing with tie scores similar to the method for the work measures.

Response: We agree with the commenters and are revising the food stamp outcome measures in paragraphs (c)(1) and (c)(2) of this section to include a method for dealing with tie scores. We will use the same method for resolving tie scores for the food stamp measures as we use for the work and the Medicaid/SCHIP measures. We will calculate the percentage rate for the absolute performance measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie. Likewise, we will calculate the percentage rate for the improvement measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

Comments: We received a number of comments related to the proposed qualifying conditions. Several commenters suggested that we strengthen the conditions. One commenter recommended that we require States to affirmatively demonstrate that their computer systems have been programmed so that when any TANF case closes, the food stamp case remains open until the worker makes an independent determination as to whether the household is still eligible for food stamps. Another commenter requested that States be required to notify the public that they are competing for a bonus related to food stamp participation and solicit comments on the extent to which agency practices are inconsistent with the qualifying conditions. The same commenter also recommended that HHS publish the preliminary determinations as to States' compliance and the basis for such conclusions, and seek comments from the public as to whether the determinations are accurate.

A number of other commenters, however, recommended that we

eliminate the qualifying conditions. One commenter noted that FNS will not have the resources to undertake the new determinations and, as a result, will likely certify that States are in compliance based on incomplete information. If the agency did discover noncompliance with these policies at a later date, the earlier certification could interfere with administrative or legal actions the agency might wish to take.

Other commenters noted that the conditions proposed in the rule are already requirements in the Food Stamp Act of 1977, as amended, and therefore are among the many factors already monitored for compliance by both the States and FNS. These commenters recommended that FNS allow States to self-certify their compliance with the conditions. Otherwise, they argue, FNS would need to redirect its limited staff resources and focus on the qualifying conditions, to the exclusion of other important State assistance and monitoring activities.

Response: After carefully considering all of the comments received on the qualifying conditions, we have decided to remove these conditions from the food stamp outcome measure. While HHS and FNS both firmly believe that it would be inappropriate for a State to win bonus money related to improving food stamp participation among working poor families if they are not in compliance with the most basic rules and regulations that are designed to provide program access, FNS' ongoing compliance activities will not necessarily be compatible with the timing of the high performance bonus awards. FNS already monitors State compliance with the four qualifying conditions, and the Food Stamp Program already contains appropriate remedies for addressing compliance issues. In addition, the qualifying conditions are so basic to maintaining good program access for working families that States that fail to meet them will likely not perform well in the bonus competition.

Although we are removing the qualifying conditions from the food stamp outcome measure, State compliance with those requirements, and with other legal and regulatory provisions related to program access, remains a high priority with FNS. For example, FNS has released two program access guides, one for working families and another for elderly and disabled households, that are designed to assist State policy makers and others in understanding what the food stamp statute and regulations require of States in terms of food stamp eligibility application processing, recertification, notice and appeal rights, among other matters. In addition, FNS is conducting customer service access reviews in every State that are designed to identify barriers to program participation, including problems stemming from noncompliance with the program's legal and regulatory requirements. By the end of FY 2000, FNS will have completed between one to three access reviews in every State. Beyond FY 2000, FNS intends to make customer service access reviews a permanent part of its oversight of the Food Stamp Program.

Comments: We received a number of comments on our proposal to use Census Bureau decennial and annual demographic program data in ranking State performance on the food stamp measure. Many commenters expressed concern as to the reliability of Census Bureau data. They noted that, in the past, Census Bureau data have provided misleading information regarding food stamp participation when compared to actual State data. Also, they felt that, while using Census Bureau data simplifies setting the baseline, it could rapidly become outdated based on population growth in States, resulting in an inability to award State bonus funds accurately and appropriately. Many commenters wondered why we did not simply use State administrative data, which is more reliable and would match the method for tracking Medicaid and SCHIP enrollment.

Response: The food stamp outcome measure examines changes in the ratio of the number of working households with children in a State that participate on the Food Stamp Program to the number of working households with children in the State that are income eligible for the program. State administrative data can only provide us with the number of working families in a State that are participating in the Food Stamp Program. They cannot tell us the total number of families in the State who are income eligible for the program. The only data source that can provide us that information is Census Bureau data.

We recognize there are problems inherent in using existing Census Bureau data sources for awarding TANF bonus funds. However, we hope to avoid many of the pitfalls identified by commenters by using new Census Bureau surveys. We will use the annual State estimates produced by the Census Bureau from its annual household survey program, beginning with the Census 2000 Supplementary Survey and transitioning to the Census Bureau's American Community Survey by 2004.

Comment: One commenter asked that we publicize baseline information from the Census data used to determine State performance on the food stamp measure on all States so States will know what current data show and how they stand in relation to other States.

Response: We intend to release the baseline Census data, as well as other data relevant to the performance and rankings of competing States.

Comments: Some commenters noted that Census data would identify noncitizens as part of the low-income population potentially eligible for food stamps. However, they may not in fact be eligible for the program. The commenters noted that this would disadvantage States with significant noncitizen populations and suggested that we factor such noncitizen groups out of the outcome measure calculation or add a provision to the measure to count State-funded food stamp recipients toward a State's overall percentage of low-income working families receiving food stamp benefits.

Response: Based on our most recent available data, almost 85 percent of households participating in the Food Stamp Program in 1995 that contained a noncitizen also contained at least one citizen child. Thus, the majority of the noncitizen households identified as part of the low-income working population eligible for food stamps in a State would contain at least one member who is eligible for food stamps. We recognize that households containing eligible children, but ineligible parents, can be an extremely difficult population to serve. However, if we were to exclude these households from the food stamp outcome measure, we would be providing States no incentive for improving access to these needy children and families.

Also, we have not included State-funded food stamp recipients in the count of a State's number of low-income working families receiving food stamps. Many of the individuals served in the State-funded program who have citizen children will already be included in the count of food stamp participating households. The majority of the remaining participants in the State-funded programs will be individuals without children who will not be included in the count of the number of low-income working households eligible for food stamps in the State.

Comments: Several commenters felt that, regardless of whether they intend to compete in the non-work measures, States should be required to provide data on their progress in the food stamp outcome measures as a prerequisite to competing in the work measures.

Response: As noted above, the data source for the food stamp outcome

measure will be Census data, not administrative data submitted by States. ACF and FNS, therefore, will have data on every State's performance on the food stamp outcome measure, regardless of whether or not a State chooses to compete on the measure. However, this information will not be used to restrict a State's ability to compete on the work measures.

Comments: One commenter felt that the food stamp measure should include both quantitative and qualitative components, especially worker-client relationship evaluations and customer satisfaction. The commenter believed that many of the barriers to participation in the food stamp and Medicaid programs are attributable to caseworker attitudes. More training and encouragement from the State agency could reverse this trend, thus increasing enrollment.

Response: Including qualitative components in the food stamp outcome measure, such as worker evaluations and reports on client satisfaction, would diminish our ability to rank States quickly and objectively. In addition, we are concerned that increasing administrative burdens on States by requiring them to collect and report such data would likely deter them from competing on the measures. We also believe the recommended new components would be process, not outcome, measures.

Finally, improving customer service is a vital component to increasing participation among low-income working families in the Food Stamp Program. States that wish to realistically compete for the food stamp related bonus will have to improve their customer service standards along the lines discussed in USDA's food stamp access guide, ''The Nutrition Safety Net at Work for Families: A Primer for Enhancing the Nutrition Safety Net for Workers and Their Children,'' published in 1999. Therefore, we are making no changes to the proposed rule.

Comments: Two commenters noted that the Economic Research Service (ERS) of the USDA is conducting research into the reasons families may not participate in the Food Stamp Program. These commenters felt that participation by low-income families in the Food Stamp Program should not be part of the TANF high performance bonus system until ERS completed this research and specific barriers are identified and resolved at the national program level.

Response: ERS is funding a study on Food Stamp Program access and declining participation. The study will examine the impact of local food stamp office policies and practices on food stamp participation. However, data collection for the study will not begin until Fall 2000, and a final report is not due until Winter 2001. While we expect the report to provide us with greater insight into the practices and policies of local offices that may deter individuals from applying for food stamps, we see no reason to wait two years to provide States with a fiscal incentive to begin removing barriers to participation. There are steps that States can take today to improve program access. We included a listing of best practices for serving working families in the proposed rule. They are also contained in USDA's publication ''The Nutrition Safety Net at Work for Families: A Primer for Enhancing the Nutrition Safety Net for Workers and Their Children.''

Section 270.4(d) Measure of Participation By Low-Income Families in the Medicaid/SCHIP Programs

In the proposed rule, we included a non-work measure related to Medicaid/SCHIP that would reward State efforts to support work, self-sufficiency and the well-being of low-income families. This measure looked at improvement in the percentage of TANF families who were enrolled in Medicaid or SCHIP at the time they lost TANF and who are enrolled in Medicaid or SCHIP six months later. We chose this approach because nearly all of these families leaving TANF are likely to be eligible for a minimum of six months of transitional Medicaid under section 1925 of the Act or to qualify for Medicaid under other eligibility groups. In addition, there have been reports from consumer advocates and State and national studies indicating that many eligible families are losing Medicaid benefits when they leave TANF. While there may be a number of outside forces contributing to the decline in Medicaid enrollment, *e.g.*, a strong economy, changes in public attitude toward welfare, we believe the challenges presented States by the delinking of cash assistance from Medicaid have also contributed to the decline. This proposed measure focused on how well States are providing Medicaid to eligible families who lose TANF. We believe that continued health insurance coverage is crucial to families making the transition from welfare to self-sufficiency, and we expect States to achieve a high rate of Medicaid and SCHIP participation among this population in order to be considered high performers.

We considered an outcome measure that would capture State performance in enrolling and retaining all eligible families and children in Medicaid and SCHIP, regardless of their former or current welfare status. However, we limited the outcome measure to individuals leaving TANF assistance because:

(1) States have a clear responsibility for serving these families under PRWORA; and

(2) welfare ''leaver'' studies and other studies on program participation indicated that these families frequently were not being served.

While a broader population measure would be consistent with a goal of expanding health coverage and have the positive effect of encouraging States to enroll eligible individuals who are diverted from TANF assistance or who do not apply for TANF assistance, the proposed measure was more directly related to the goals and purposes of TANF, as well as title I of PRWORA. Also, with no national data source on health coverage for low-income families, we believed that the focus on TANF ''leavers'' would result in a smaller reporting burden and in the collection of more accurate and consistent information by States. It, thus, should produce fairer comparisons in assessing State performance.

In the NPRM, we also proposed certain qualifying conditions, based on requirements in Medicaid law and regulations, that States must meet before competing for an award in the Medicaid/SCHIP measure. Those qualifying conditions were:

(1) The State has issued policy instructions or regulations clearly specifying that, at first contact with the TANF agency (when the TANF agency is also the Medicaid agency), an individual must be given the opportunity to apply for Medicaid in accordance with 42 CFR 435.906;

(2) When eligibility under section 1931 of the Act is lost due to hours of, or earnings from employment or loss of time-limited earning disregards, the State issues to the affected family a written notice that meets the requirements of section 1925(a)(2)(A) of the Act and a card or other evidence of the family's entitlement to assistance as required under section 1925(a)(2)(B) of the Act;

(3) The State has issued policy instructions or regulations clearly specifying that family members may not be terminated from Medicaid until it has been determined that they are not eligible under any other Medicaid group; and

(4) The State has fulfilled all data requirements under the law, including being up to date on all Medicaid and

SCHIP data submissions, and having the MSIS on-line and operating properly.

We proposed these qualifying conditions because we did not believe that a State that is out of compliance with basic program requirements should be eligible for a bonus related to Medicaid and SCHIP participation.

In addition to complying with the qualifying conditions, we proposed that applicant States must meet at least two qualifying State options. We believe that States exercising these options are likely to increase enrollment of eligible families and, therefore, would perform better on the outcome measure. The proposed programmatic options were:

(1) The State accepts mail-in or phone-in applications for Medicaid for families and children, which can be completed without a face-to-face interview;

(2) State Medicaid workers have been outstationed at locations in addition to the locations required under 42 CFR 435.904(c)(1) and (c)(2);

(3) The State has expanded Medicaid eligibility for recipient and applicant families through the use of less restrictive methodologies, authorized by section 1931(b)(2)(B) and (C) of the Act;

(4) The State uses a definition of ''unemployed parent'' that includes parents who are employed more than 100 hours per month, as authorized under 45 CFR 233.101 and section 1931(b) of the Act.

(5) The State provides continuous Medicaid eligibility for children for a period of time without regard to changes in circumstances, as authorized by section 1902(e)(12) of the Act;

(6) The State provides a period of presumptive Medicaid eligibility for children as authorized by section 1920A of the Act; or

(7) The State has simplified the enrollment and re-enrollment processes for children and low-income families by implementing such improvements as shortened application forms.

We proposed that those States that met the qualifying conditions and options would be eligible to compete for the bonus award based on their performance under the outcome measure. Specifically, the outcome measure would assess Medicaid and SCHIP participation among persons whose TANF assistance cases were closed in the calendar year who also were enrolled in Medicaid or SCHIP at the time of case closure. The measure of State performance would be the percentage of such individuals who are enrolled in Medicaid or SCHIP six months after leaving TANF and who are not currently receiving TANF assistance in that month. We proposed to compare a State's performance to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, and to award bonuses to the 10 States with the greatest percentage improvement in this measure. We proposed to allocate $20 million annually for this measure.

We received a significant number of comments from States objecting to the Medicaid measure. We received a larger number of comments from other individuals and organizations, including national advocacy organizations and Members of Congress, in support of the Medicaid measure. Some States objected based on philosophical grounds while others objected for programmatic, administrative and equity reasons. Those commenters supporting the inclusion of a Medicaid measure cited the importance of Medicaid to low-income working families and referred to several recent studies on the declines in Medicaid caseloads where individuals, particularly children, were eligible for Medicaid or SCHIP benefits. (See ''Overview of Comments in the Food Stamp and Medicaid/SCHIP Measures'' in Part IV above.)

Briefly, in response to the comments, we have made the following changes in the final rule:

- Added an absolute performance measure;
- Changed the award structure to grant bonuses to the three States that rank the highest on the absolute performance measure and the seven States that rank the highest on the improvement measure;
- Revised the improvement measure to measure the percentage point improvement, rather than the percentage improvement, in participation;
- Changed the six-month time frame to a four-month time frame;
- Dropped the qualifying conditions and qualifying options;
- Required that States competing on these measures submit data on a fiscal year, rather than a calendar year, basis; and
- Clarified how we would deal with tie scores.

In addition, based on our own review and analysis, we have revised the regulatory text at § 270.4(d) to clarify that the denominators of the Medicaid/SCHIP measures exclude individuals who are receiving TANF at the time of follow-up (*i.e.*, the fourth month after leaving).

Below, we summarize the comments we received and our responses.

Comment: Most commenting States objected to the inclusion of Medicaid as a performance measure. They stated that including the Medicaid measure is at odds with the TANF goal to decrease dependence on Government benefits and is not specific to the TANF program. Specifically, they argued that:

- The measure is inappropriate because it unfairly rates the success of TANF on the State performance in other programs;
- The high performance bonus awards should not be used to enforce Medicaid law;
- Including Medicaid shifts the focus away from work and the TANF population; and
- It is not an outcome measure of the number of former TANF customers who are better off, but instead a process measure of the number of enrollees in another government program.

Commenters supporting inclusion of the Medicaid measure viewed Medicaid as a critical support to low-income working families; in view of the declines in the Medicaid rolls after passage of welfare reform, they noted that the measure looks to reward State improvements in increasing Medicaid and SCHIP participation.

Response: We believe that Medicaid is a vital support to low-income working families and the provisions in this regulation will measure overall State performance in achieving the TANF goal of promoting job preparation and work. In addressing this comment earlier in the section entitled ''Overview of Comments on the Food Stamp and Medicaid/SCHIP Measures,'' we gave many reasons why we believe the inclusion of the Food Stamp and Medicaid/SCHIP measures is appropriate. In this response, we expand on those thoughts, particularly as they relate to the Medicaid measure.

The commenters are correct that one of the goals under section 401(a) of the Act is to end welfare dependence by promoting job preparation, work, and marriage. However, States can best promote self-sufficiency through job preparation and work by providing the support systems, such as health insurance coverage, that are essential to families during their transition from welfare to work.

As noted by several commenters, there have been many studies that indicate the need for Medicaid coverage while families make this transition. A January 2000 Urban Institute study found that more than one-third of women and nearly one out of five children are uninsured within the first six months of leaving welfare. State studies of families that have left TANF are also finding that at least 20% of children and the majority of parents are no longer receiving Medicaid (see

''Participation in Welfare and Medicaid Enrollment,'' Kaiser Family Foundation, 1998). A May 1999 Families USA study found that over two-thirds of a million low-income individuals lost Medicaid coverage and became uninsured as of 1997 due to welfare reform.

In enacting section 114 of PRWORA, Congress clearly intended to preserve Medicaid coverage for low-income families whose parents left welfare and went to work if they needed health care coverage and otherwise qualified for Medicaid. Congress preserved the health care safety net because it considers Medicaid a critical support for working families who might otherwise have no health insurance.

We do not believe that the fact that Medicaid may be administered by an agency other than the agency principally responsible for TANF is a reason for not including Medicaid enrollment as a measure in this high performance bonus regulation. As we stated earlier, it is more appropriate to view the high performance bonus as an award for State, not State agency, performance. TANF funds are used by many State and local agencies to accomplish the goals of the TANF legislation; indeed, the TANF block grant opens up new opportunities for additional agencies and nongovernmental organizations to get involved in the administration of the TANF program and the delivery of TANF benefits and services. It also provides new incentives for improved State and local interagency cooperation and cross-program efforts to encourage work and self-sufficiency.

TANF and Medicaid are closely related whether or not the programs are administered jointly by the State. Inclusion of a Medicaid outcome measure as part of the high performance bonus award is not an attempt to enforce Medicaid law, but rather to measure a State's overall success in serving low-income families leaving welfare. We believe that we should use the high performance bonus to encourage and recognize State efforts to effectively coordinate TANF and Medicaid program operations and reduce or eliminate barriers to ongoing Medicaid coverage for eligible families leaving TANF. Inclusion of a Medicaid performance measure provides focus on how well a State is achieving the goals of TANF and further meets congressional intent to provide support services while ending dependence on cash assistance.

Comment: Several commenters objected to including the qualifying conditions and the qualifying options in the NPRM. The commenters argued that these conditions appeared too controlling and that the high performance bonus does not provide an appropriate vehicle for HCFA to evaluate whether a State is in compliance with the qualifying conditions. Other commenters also questioned whether the high performance bonus was an appropriate vehicle for evaluating or verifying State compliance with HCFA requirements. One commenter recommended that we offer programmatic options to States as suggestions for improving their performance.

A number of other commenters supported inclusion of the qualifying conditions and options, but recommended modifications. The specific suggestions included one to strengthen the qualifying conditions by requiring States to ''affirmatively demonstrate compliance'' and others to strengthen the qualifying options by requiring that States adopt a higher number of the seven qualifying options.

Response: We proposed the qualifying conditions based on the philosophy that States out of compliance with related Federal requirements should not be eligible for a bonus. We also believed that States meeting the qualifying options would perform better on the outcome measure. However, we recognize that the inclusion of the qualifying conditions and options conflicts with the NGA/APHSA principle that a high performance bonus system should focus on outcomes rather than process.

In addition, we have concluded that the bonus award system is not the appropriate vehicle by which to evaluate or certify State compliance with Federal Medicaid requirements. For example, at the time we are making the high performance awards, we might not have completed a recent assessment of all State programs or there might be a potential compliance issue pending with one State that cannot be resolved in a short enough timeframe. Thus, we agree that it would be more appropriate to address such issues through ongoing Federal oversight of State Medicaid programs and a vigorous agenda of technical assistance and guidance. Therefore, we are dropping the qualifying conditions and qualifying options from the final rule.

Among the significant activities in the Department's agenda to resolve Medicaid enrollment issues are the following:

- Reviews of all State Medicaid programs, primarily during the summer and fall of 1999, to assess compliance with Medicaid requirements and to advise States when corrective actions are necessary;
- Issuance of additional program guidance to State Medicaid Directors clarifying the expectations that apply (*e.g.*, the April 7, 2000, letter that addressed expectations with respect to reinstatements, redeterminations, and computer systems modifications);
- Development and distribution of thousands of copies of a guide entitled Supporting Families in Transition: A Guide to Expanding Health Coverage in the Post-Welfare Reform World, which explains the basic rules for Medicaid eligibility under the PRWORA amendments;
- Development and distribution of special guides for State and local partners in the child care and Head Start communities to promote their participation in enrollment efforts;
- Issuance of guidance encouraging States to use the $500 million made available to help them provide outreach and address administrative changes related to delinking development and distribution;
- Issuance of a TANF guidance (in the form of a guide entitled ''Helping Families Achieve Self-Sufficiency: A Guide of Funding Services for Children and Families through the TANF Program'') making clear that States may use TANF funds to ''provide outreach activities that will improve access of needy families to medical benefits under the Medicaid and [S]CHIP programs'';
- In cooperation with the Robert Wood Johnson Foundation, interdepartmental support for the ''Supporting Families'' initiative to assist 22 sites in assessing and resolving barriers to initial and continuous participation in Medicaid and SCHIP. (Six of these sites will look at food stamp issues as well);
- Related contract support for development of a literature review and ''promising practices'' report to provide background information and technical assistance for all States; and
- Meetings with State agencies to discuss access issues of general concern.

Comment: Several States disagreed with the six-month time frame in the outcome measure, primarily because tracking families who leave TANF for six months would impose a significant burden on States. Also, data collection is problematic because SCHIP is a stand-alone agency in many States; States cannot always match the Medicaid records to TANF records (*e.g.*, because the case composition may be different under the two programs); and some States do not have social security numbers for all SCHIP participants to

match with TANF records. Commenters generally suggested limiting the time frame to the month following the month that families leave TANF. One other commenter suggested that States also demonstrate that families accessed health care services.

Response: We had proposed the six-month time frame because most families who leave TANF are eligible for six months of transitional Medicaid or for ongoing Medicaid under other eligibility categories. We also believed that States could easily identify these cases. However, a time frame shorter than six months may reduce the tracking burden on States because families will presumably have undergone fewer changes in this shorter time period, and case management information may be more useful. For example, there should be fewer families that have moved out of State or that have experienced significant changes in family composition. At the same time, we believe that the recommended one-month time frame is too short. Our concern is that some States may carry Medicaid coverage for one month after TANF benefits are terminated for systems reasons; thus, a one-month coverage period would not fairly assess whether policies and systems were in place to ensure ongoing Medicaid coverage for eligible families.

We are revising the final regulation at § 270.4(d) to reduce the measurement period in both the absolute measure and the improvement measure from six months to four months. We believe that a four-month time frame better accommodates States' concerns about tracking and the availability of case management information while still providing a reasonable time frame for assessing Medicaid or SCHIP participation by individuals in families who leave TANF. Also, the four-month time frame accommodates families that receive Medicaid extensions based on increased child support collections since this form of transitional benefit only lasts four months.

Most families who leave TANF are eligible for Medicaid through transitional Medicaid, under section 1931 of the Act, or under the medically needy or poverty level groups. Because families eligible under Medicaid must enroll in Medicaid rather than SCHIP, the instances under which children will be eligible for coverage under a separate SCHIP program are greatly limited. States can use methods such as case identifiers to match SCHIP and TANF cases in those instances.

We have also required that States competing on these measures submit their information on a fiscal year, rather than a calendar year basis as we proposed in the NPRM. We are changing to reporting semi-annually on a fiscal year basis for ease of processing the information and to parallel the requirements for reporting information for the work measures.

Comment: Several commenters responded to our invitation to comment on our decision to limit the outcome measure to individuals leaving TANF assistance, rather than all eligible families and children. Most of these commenters recommended using the larger population of Medicaid/SCHIP eligibles to assess overall State performance since these programs provide critical supports to all low-income families and children. They believed that the proposed measure merely rewards States for complying with section 1925 of the Act, by providing six months of transitional Medicaid to certain families who lose TANF assistance.

Response: In view of the decline in the Medicaid rolls nationwide since 1995, continued Medicaid for families losing TANF is of particular concern. In the NPRM, we proposed to concentrate the performance measure on States' efforts to provide continued Medicaid for eligible families leaving TANF since this is an area of program administration that has been identified by consumer advocate groups and local and national studies as needing improvement. In the final rule, we have aligned the Medicaid provisions with the food stamp provisions to allow for consistency to the extent possible. However, unlike the Food Stamp Program, there are many variables, as discussed below, that affect Medicaid participation among populations other than TANF leavers. For this reason, and other reasons that we also discuss below, the Medicaid outcome measure differs from the food stamp outcome measure in that it does not assess State performance based on participation of all Medicaid populations.

In response to widespread concerns that PRWORA's delinkage of Medicaid and cash assistance had negatively affected access of low-income families to medical benefits, HCFA conducted on-site reviews in all the States and Territories from September to December 1999 to examine State TANF and Medicaid application and enrollment policies and procedures to ensure that eligible families learn about, receive, and maintain Medicaid coverage. A particular focus of these reviews was on how the TANF application, denial, diversion, and termination processes affect application for and receipt of Medicaid. Based on these reviews, HCFA is in the process of identifying areas where States need to improve their Medicaid application, enrollment, and re-enrollment processes either solely in their Medicaid programs or in conjunction with the administration of their TANF programs. HCFA released policy guidance in some of these areas by way of an April 7, 2000, State Medicaid Directors Letter. This guidance directs States to identify individuals who have been improperly terminated from Medicaid and to reinstate their coverage; clarifies the proper procedures for eligibility redeterminations, and reviews the obligations imposed by Federal law with regard to operation of computerized eligibility systems. In view of the need for continued improvement in these areas and the purpose of the high performance bonus, we believe that the high performance bonus system should include a Medicaid/SCHIP measure that focuses on how well States are meeting the TANF goals of work preparation, work and self-sufficiency.

As stated earlier, we limited the outcome measure to individuals leaving TANF assistance because: (1) States have a clear responsibility for serving these families under title I of PRWORA, *i.e.*, under the amendments to section 193l of the Social Security Act; and (2) welfare ''leaver'' studies and other studies on program participation indicate that these families frequently are not receiving Medicaid/SCHIP. Furthermore, we believe this type of measure will result in a significantly smaller reporting burden for States, as well more accurate and consistent reporting.

We do not agree with the comment that this measure merely rewards States for complying with the law. The transitional Medicaid provision under section 1925 of the Act covers only those families who were eligible and received Medicaid under section 1931 of the Act. (This is the PRWORA provision covering families who meet AFDC-related eligibility standards for three of the six months prior to losing Medicaid because of income or employment.) Some families leaving TANF because of work are not eligible for transitional Medicaid because they were not receiving Medicaid under section 1931 for three of the six months before losing Medicaid due to earnings or income. However, under section 1931, States may adopt less restrictive income methodologies to ensure that families seeking TANF benefits, but moving quickly to work, can qualify for transitional Medicaid benefits.

In cases not covered by this transitional Medicaid provision, the dependent children generally continue to receive Medicaid under the State's poverty levels groups or may qualify for benefits under the SCHIP program, and we want to ensure that these children are receiving these benefits. A different provision in section 1931 of the Act provides transitional Medicaid for families losing benefits as the result of child support collections. Other families might be eligible under a State's medically needy group.

In addition, many of the factors affecting enrollment in Medicaid are not compliance matters. Two States that fully comply with all Federal requirements could have vastly different participation rates because of differences in how they operate their programs. While there are potential compliance issues with respect to matters such as *ex parte* redeterminations and proper notice, States have discretion in numerous areas of policy and administrative practice. For example, in the policy area, States have flexibility to expand eligibility coverage through the use of more liberal income and resource standards and methodologies. In the area of administrative practice, States have broad flexibility with regard to variables such as the location of eligibility offices, office hours, length of application, amount of verification required, outstationing, and use of mail-in and phone-in applications to eliminate barriers to and simplify the application process and reduce procedural requirements. Limiting the outcome measure to families who leave TANF but remained enrolled in Medicaid focuses on the only group for which there are data easily accessible to all States on a uniform basis.

In view of the reasons stated above addressing the responsibilities of States to provide Medicaid to eligible families, particularly those leaving TANF, and the flexibility afforded States to meet these responsibilities, we are retaining in the final rule at § 270.4(d) the outcome measure limited to those families who leave TANF, but are enrolled in Medicaid after leaving TANF.

Comment: One commenter observed that the September 30, 2001, sunset date of section 1925 of the Act complicates the measurement since eligibility for transitional benefits will change after that date and one would expect a number of families would not be entitled to be on the rolls by month six.

Response: The commenter is correct. Unless Congress acts to change this provision, beginning in FY 2002, families who lose Medicaid eligibility because of hours of, or income from, employment or because of loss of earned income disregards will be eligible for a minimum four-month period of extended Medicaid eligibility. Since we are reducing the measurement time frame from six months to four months in this final rule, we do not expect States will be adversely affected in competing for an award.

Comment: A number of States commented that there are other factors—such as moves out-of-State, death, changes in family formation, increased earnings, and enrollment in private health insurance—that affect participation in Medicaid and SCHIP. Of particular concern was that the proposed measure did not allow any adjustment for families who obtain private health insurance.

Response: We agree that there are numerous factors that affect families' participation in the Medicaid and SCHIP programs. However, if we were to provide an adjustment for all circumstances that can affect States' caseloads, the outcome measure would conflict with the NGA/APHSA principles that the bonus system should: (1) Be simple, credible and quantifiable; and (2) rely on existing data where available. Also, if all States could not identify or exclude cases based on deaths, moves out-of-State, or other circumstances, then allowing adjustments would disadvantage the States that could not do so, thus creating an uneven playing field.

Similarly, we have decided not to make adjustments for families who obtain private health insurance after leaving TANF. While we applaud State efforts to get individuals into jobs that provide health coverage and related benefits, and we would like to be able to credit States somehow for success in this area, adequate data on private health insurance coverage do not exist. Further, the costs that would be associated with collecting comparable, adequate data for all States would be prohibitive. One underlying issue is that private insurance coverage varies substantially across employers and individual employee circumstances. This variability suggests that, in order to treat States fairly, we should somehow measure the quality and level of coverage under the private plans and include appropriate adjustments.

In summary, since private plans seldom offer benefits comparable to Medicaid, we would not necessarily want to give States the same credit for private coverage. Furthermore, participation in employer-sponsored insurance does not affect an individual's entitlement to transitional medical assistance.

Finally, although we recognize that some States have given a high priority to job placements that provide health coverage and have achieved some success, the national statistics suggest that it would be quite rare for those entering low-wage jobs to obtain private health insurance that is affordable and comparable to the benefits provided by Medicaid. The types of employment situations these families generally access, especially in the short run, mitigate against adequate health coverage. The types of industries and the types of occupations, union status, the size of establishments, length of time on the job, and the use of part-time or temporary employment all increase the chances that a family would not have adequate coverage.

For example, according to a study in the June 1995 Monthly Labor Review, while six of ten workers had employer-based coverage, only one-fourth of service workers in service-producing industries had such coverage. The study also noted that, in general, industries where coverage has traditionally been more prevalent have been in decline as a portion of the U.S. economy. It cited service jobs such as waitressing, cosmetology, and cleaning as occupations with less access to employer-based coverage. According to more recent data (1996–1997) from the Bureau of Labor Statistics (BLS), while 70 percent of those employed full-time in the private sector participate in employer-based plans, only 11 percent of part-time private-sector employees do.

In the event that private insurance is available, it is apt to be under a plan with a limited benefits package. Data from the 1996 and 1997 BLS Employee Benefits Surveys show that 78 percent of those participating in an employer-based plan had to contribute to the cost for family coverage (''Compensation and Working Conditions,'' Winter 1999). Earlier BLS data showed a 200 percent increase in the average family premium between 1983 and 1993. Accordingly, ''premiums may be difficult for some workers to afford, causing them to decline coverage.'' Also, about three-fifths of all participants have coverage that is subject to a pre-existing condition clause, limiting the care they can receive. Thus, even where individuals have access to employee benefits, we are concerned that families receive the wrap-around services that Medicaid can provide and to which they are entitled.

Comment: A number of States commented that the performance

measure disadvantages States that have achieved high levels of Medicaid/SCHIP participation since low-performing States can make greater improvements. A few of the commenters recommended that we use a percentage point improvement measurement rather than percentage improvement measurement to even the playing field.

Response: We agree that high performing States may be disadvantaged by the performance measure as proposed. Therefore, in the final regulations at § 270.4(d), we have substituted a measure of percentage point improvement for the proposed percentage improvement measure. We believe the measure in the final regulation puts States on a more even playing field, regardless of their baseline level of performance. At the same time, States whose performance was relatively low in the base year are still in an excellent position to be rewarded for their efforts toward increasing enrollment.

Under the proposed measure, a State that increased Medicaid participation from 5 percent to 10 percent (a 100 percent improvement) would be ranked higher than a State that increases participation from 30 percent to 45 percent (a 50 percent improvement). In the final rule, a State that increases participation from five percent to ten percent would achieve a five percentage point improvement while a State that increases participation from 30 percent to 45 percent would achieve a 15 percentage point improvement and would be ranked higher than the first State.

Comment: Some commenters recommended an absolute measure rather than a performance improvement measure. Other commenters recommended expanding the measure to have both an improvement measure and an absolute measure so that States could be ranked separately on both measures. They also suggested that we divide the bonus funds among the top five States achieving high performance in both measures.

Response: We agree that adding an absolute measure provides for a fairer system of awards and have made this change in the final rule. Under the NPRM, States that engaged in early and successful efforts to increase enrollment could have found it extremely difficult to compete for these awards, and their efforts might never have been recognized. The final rule sets aside some of the bonus awards for those States that have the highest overall success in enrolling individuals in eligible families. For the absolute performance measure, we will rank the States in order of the highest percentage of Medicaid/SCHIP participation rates by individuals in families four months after leaving TANF and who are not receiving TANF in the fourth month.

In awarding bonuses to the top performing States under both performance measures, we will divide the $20 million in bonus funds, as specified in § 270.8, among the three States that have the highest percentage of Medicaid/SCHIP participation rates by individuals in families four months after leaving TANF and who are not receiving TANF in the fourth month (absolute performance measure) and the seven States that show the most improvement performance from the previous year to the current year (improvement performance measure). This allocation of bonus funds among the States is consistent with the Food Stamp allocation of bonus funds among States that compete on the Food Stamps measure.

Comment: One commenter noted that the Medicaid measure should have a method for dealing with tied scores.

Response: We agree with this comment. In the interest of consistency, we will use the same method that we used for the work and food stamp measures. We specify in paragraphs (d)(1) and (d)(2) that we will calculate the percentage rate for the two measures to two decimal points. If two of more States have the same percentage rates, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

Also, since participation in the high performance bonus award system is voluntary, we will rank only those States that choose to compete, notify us by February 28 of the bonus year of their intent (§ 270.11), and provide the requisite data.

New Section 270.4(e) Child Care Subsidy Measure

A substantial number of commenters recommended a child care measure, either as an additional new measure or as a replacement for the family formation measure. We agree that child care is of critical importance to working families, and we share the commenters' view that access to affordable, high quality care is a necessary part of a welfare reform program. We believe that high quality care is of critical importance to children of TANF and other very low-income families. A growing body of research indicates that quality and stability of the child care setting influences outcomes for children as well as the ability of parents to retain employment.

In support of their recommendations, commenters observed that currently there is no reward for good performance in providing child care. A child care bonus, they believed, would be an excellent incentive toward better State performance, given that only a small percentage of income-eligible children are now receiving subsidies, according to published estimates from this Department. Many commenters based their rationale simply on the fact that child care is a critical work support needed in order for poor families to work. The suggestions for how we should construct a specific child care measure centered primarily on the number or proportion of children receiving child care subsidies and/or the amount of expenditures on eligible children.

In developing the NPRM, we had considered the possibility of including a child care measure, not only because of its importance to working families but also because the CCDF program and the TANF program are closely related. However, we did not propose a child care measure for various reasons. Our reasons included the lack of currently available data that would completely capture State performance on all of the crucial elements, including quality, affordability and accessibility of an effective child care subsidy delivery system. We also took into account the lack of data that would fully capture how well States are performing in serving the TANF/CCDF population given the considerable duplication in data sets and inconsistencies in statutory data collection between the two programs.

Based on the extensive support among commenters for a child care measure and upon further evaluation of the availability of data, we have devised a child care measure that we believe will reward States based on an appropriate range of important child care program elements. This new measure is located at § 270.4(e) of this final rule. The three components of the measure address child care accessibility, as indicated by the percent of CCDF-eligible children receiving services; affordability, as indicated by assessed family co-payments; and quality, as indicated by State reimbursement rates. We believe it is essential to include all three components in order to assess a State's performance in making high quality child care more accessible to low-income families. We will use Census Bureau and existing CCDF data on two elements for the FY 2002 bonus year and add an additional element for subsequent years that will require additional information to be reported by

States choosing to compete for the measure. The top 10 performing States that choose to compete on this measure will each receive a portion of a total of $10 million in bonus funds awarded annually for this measure.

We intend to engage States and others, particularly data experts, in discussions regarding the technicalities of implementing key elements of the measure. While there were many comments in support of a child care measure, and many of these comments supported the areas that we have selected for measurement—accessibility, affordability, and quality of child care—there was no opportunity for detailed consultation or comment on the technical aspects of measurement within these areas, because a child care measure was not included in the NPRM. After consultation with States and others. We intend to issue details regarding the components of the measure by the end of the calendar year.

For the FY 2002 bonus year, the measure consists of two components: the percentage of eligible children served and the affordability of care for the families of the children served as indicated by the relationship between the State's reported family CCDF co-payments and reported family income. These components of the measure use existing data reported by the States on the ACF–801 and the ACF–800 as the source for the number of children served, family copayments, and family income. We will calculate the percentage of children served with ''pooled'' funds, *i.e.*, CCDF funds (including transfers from TANF) and any other funds that are reported to us on the ACF–696 (CCDF financial reporting form) for the applicable year.

Each State's rank on the measure in the FY 2002 bonus year will be a composite weighted score of the two components, with the component on percent of population served having a weight of 6 and the component on affordability of family co-payment having a weight of 4.

We will use Census Bureau data (the Census 2000 Supplementary Survey and the Long-Form Transitional Database) as the data source for family income at 85% of the State's median income, *i.e.*, the Federal eligibility limit set in statute for the CCDF, to determine income-eligibility in calculating the percentage of children served.

To determine affordability, we will compare family income with assessed state family co-payment as reported on the ACF–801. Because States have tremendous flexibility in setting sliding fee scales under the regulations governing the CCDF, in order that they can balance different needs and make child care affordable for families at a range of incomes, we will refine the technical details of this measure through additional consultation with States and data experts.

For FY the 2003 bonus year we will further strengthen the measure by adding a third component that compares actual rates paid by the State to the market rates applicable to the performance year. Each State's rank on the measure in the FY 2003 bonus year will be a composite weighted score of the three components, with the component on percent of population served having a weight of 5, the component on affordability of family co-payment having a weight of 3 and the third component on the comparison of rates paid to market rates having a weight of 2.

This third component cannot be implemented in the FY 2002 bonus year because States do not currently report the data collected in the CCDF-required market rate surveys, nor is there any consistency among States in how the surveys are conducted. However, we believe this additional component of the measure will strengthen our ability to assess a State's performance with respect to both affordability and quality, since access to higher quality, more stable care for families receiving subsidies is often linked to the rates paid to providers by the State.

This component will use existing data on actual rates paid for children receiving CCDF subsidies as reported on the ACF–801, and data on actual market rates that will be submitted by those States that choose to compete on the child care high performance measure. We will draw the necessary data from the market rate data collected by the State in the CCDF-required survey. Consistent with existing CCDF requirements, this survey must be completed no earlier than two years prior to the beginning of the performance year when the performance year is the first of the biennial State CCDF Plan cycle, or no earlier than three years prior to the beginning of the performance year when the performance year is the second year of the State CCDF Plan cycle. While States must complete their surveys within the specified time frame, CCDF regulations do not require submission of the survey data. A process for submission of this data by States choosing to compete on the child care measure and the precise methodology to be used in ranking States on the relationship between rates paid and market rates will be developed through additional consultation with States and data experts.

For all bonus years, we will distribute bonuses to the top 10 qualifying States that have both fully obligated their CCDF Matching Funds for the fiscal year corresponding to the performance year and fully expended their CCDF Matching Funds for the fiscal year preceding the performance year. The source of this financial information is the ACF–696 for the corresponding bonus performance period. This requirement contributes to the effective use of Federal funds and to a level playing field across States, by ensuring that no State can win the child care high performance bonus through substituting TANF or other 100% Federal funds for CCDF Matching Funds (although States may certainly add resources to the CCDF ''pool'' of funds). Thus, all States competing for the child care bonus must have committed all of their dedicated child care funds.

We address commenters' specific recommendations for the child care measure below. The approaches suggested by many of the commenters were similar. The commenters proposed a variety of options, some more detailed than others, while none provided an in-depth analysis of potential data sources. To avoid repetition, we have organized the comments by type, rather than by content of individual letters.

Comments: Commenters suggested that a child care measure might be based on various target populations, including:

(1) TANF recipients and former TANF recipients;

(2) Children eligible under the provisions of the Child Care and Development Fund (*i.e.*, at or below 85 percent of State median income);

(3) Children at or below 200 percent of poverty;

(4) Children served under both the Child Care and Development Fund (CCDF) and, at State option, other subsidy programs funded by TANF or State sources; or

(5) Children in two-parent households receiving child care services (as a suggested substitute for the family formation measure).

Response: We concur that a child care measure should take into account the population served, *i.e.* a measure of accessibility to subsidies. Therefore, we have incorporated percentage of CCDF-eligible children served into the composite child care measure. We will include children served with ''pooled'' funds (all funds reported on the ACF–696 for the period corresponding to the performance year) in the percentage. We believe that the most appropriate denominator is the target population eligible under the Child Care and

Development Block Grant Act, *i.e.*, at or below 85% of the State Median Income.

We do not have an existing data source that would accurately capture child care subsidy services to all TANF recipients. Nor could we determine a method of eliminating duplicate counting of children served with TANF and CCDF maintenance-of-effort funds.

Since we are adopting a separate family formation measure, we did not see a rationale for focusing the child care measure solely on two-parent families. Child care is a critical support for one-parent as well as two-parent families when parents are working. Our measure does recognize that this is a TANF high performance bonus by capturing those children connected to TANF, transitioning from TANF or at risk of becoming eligible for TANF who are served in the CCDF system, including families served with ''pooled'' funds reported on the ACF–696.

Comments: A few commenters suggested that the bonus be based on a measure of State expenditures on child care subsidies divided by the estimated number of federally-eligible children under the age of 13. They suggested this simple measure in recognition that there are problems with consistency among programs in eligibility, payment levels, and other factors.

Response: While this measure would involve a minimal reporting burden, we do not believe that this is a meaningful measure, since it would not capture a measure of the extent of services provided to families, as our measure does. This suggested measure would be more process-based than the measure we adopted and would ignore critical elements of a State's child care performance.

Comments: A few commenters also suggested using both an absolute and an improvement measure for one or more of the suggested components of the child care bonus.

Response: We believe that it is most important to focus upon an absolute measure. First, we could not include quality until the third year of child care bonus if we were to seek to include an improvement measure, because there are no baseline data available. We would be very concerned about this consequence because, as we have noted, we believe that a balanced measure of accessibility, affordability, and quality is crucial to ensure beneficial outcomes for children. Second, we believed it to be especially important to reward those States that have already made considerable progress in improving the access, affordability, and quality of care for low-income families.

Comments: Some commenters suggested factors such as high payment rates and low family co-payments. One suggestion was to pay an increased bonus to States that adopted reimbursement rates at the 75th percentile of the local market rate.

Response: We concur that the child care performance measure should contain an indicator of affordability. Therefore, we have incorporated an indicator of affordability into the composite bonus, beginning with the first child care bonus year, by measuring the relationship of family copayments to family income.

In the second year of the child care bonus we will add a component that compares reimbursement rates to applicable market rates. These facets of the measure will also at least indirectly address quality of services, since families in top performing States would likely have access to a broader range of higher quality care, which often costs more than mediocre care. We cannot implement the payment component in the FY 2002 bonus year because States are not currently required to submit data on the relationship between their reimbursement rates and the market rates in the State. Nor do we have access to consistent information on what constitutes the 75th percentile in each State.

We believe that this approach is stronger than an approach that would link extra bonus funds to a specific level of rates, such as the 75th percentile. First, we believe that an approach that rewards States for rates that provide more access to the market for low-income families without setting a single standard is more consistent with the flexibility in the CCDF statute. The CCDF final rule (63 FR 39959) uses the 75th percentile as a benchmark, not a requirement. Second, we want to ensure that States have a continued incentive to improve the access of low-income families to the market beyond any specific marker. Third, we want to ensure that the bonus approach does not inadvertently inhibit the ability of States to try a variety of approaches to rate-setting that might enhance quality, including rate structures that offer incentives linked to provider qualifications, certification, or other quality measures. In the context of a shortage of dedicated Federal child care funds and the trade-offs that States could be forced to make as a result, we are concerned that a bonus linked to a single approach to payment could inadvertently be counter-productive. Our approach is intended to reward States that, by making the best use of all the resources and choices available to them, have established higher rates.

Comments: Some commenters suggested that the child care bonus incorporate certain measures of quality. The ideas forwarded by one or more commenters consisted of:

- Excluding children who are in informal or unlicensed care from the population measure;
- Measuring the use of licensed care by subsidized families; and
- The payment of higher rates to accredited centers.

Response: We concur that quality child care is important for the healthy development of all children and is especially crucial for children in low-income families who often are disadvantaged educationally as well as financially. Thus, we incorporated quality into the bonus measure by looking at factors that allow families to pay for better care, an approach that is consistent with the parental choice concept that is central to the statute governing the CCDF. Licensing and certification systems vary greatly, and we do not have the data to determine access to accredited care. Moreover, children often are in multiple arrangements or frequently are moved to different settings for various reasons. Available data would not support an unduplicated measure related to use of specific types of care.

Comments: Several commenters also suggested a child care threshold measure, either as a qualifying factor for a child care bonus or in order for a State to receive other bonus awards. They suggested:

1. Before a State could compete on a child care measure, the State must pay a child care rate equal to at least the 75th percentile of the local market rate based on a survey that is not more than two years old; or

2. To qualify to compete, a State must spend a required percentage of child care funding for care that meets State certification standards.

Other suggestions included granting high performance bonus awards only on the condition that a State based its child care payments on recent market surveys or served at least 70% of its income-eligible children.

Response: We agree with commenters on the critical importance of quality and access to child care services. However, we do not believe it is useful to include these factors as qualifying conditions. Instead, we have taken a stronger position by addressing payment rates and percentage of children served directly in the child care measure we developed. In our response regarding the suggestion that we include use of

licensed or accredited care in the bonus itself, we explained why we believe that there are not data available to make a measurable determination on use of such care. As we pointed out earlier, we also sought to develop a measure that supports the central CCDF concept of parental choice.

Other Recommendations for New Measures in or Approaches to the Bonus System

In addition to recommendations for a new child care measure, we received many comments for other measures as well as suggestions for how the high performance bonus system might be improved. We summarize and respond to these comments below.

A. Domestic Violence

Comments: A substantial number of the letters and notecards recommended adding a measure of how well States address domestic violence. In support of this recommendation, some commenters provided detailed background information about the prevalence of domestic violence among women on TANF and how domestic violence can hinder an individual's ability to maintain work in a way that leads to self-sufficiency.

Most commenters on this issue recommended that the measure be designed to ''look at the proportion of women who disclose they are victims of domestic violence who receive services or waivers under the [TANF] family violence option.'' Alternatively, a few other commenters suggested that we add a threshold measure related to domestic violence, *i.e.*, only States that adopted the TANF Family Violence Option and ''meet the requirements of federally recognized good cause waivers'' (45 CFR 260.55) could compete for other bonuses. One commenter suggested that the Department would have to adopt ''a detailed statement on how to effectively implement a Family Violence Option''; another commenter suggested that competition for the bonus include interviewing domestic violence advocates in the State.

Response: We strongly agree that domestic violence services are important to the well-being of families and to support work and self-sufficiency. We are committed to efforts that both serve families who are victims of domestic violence and implement prevention programs. The Department has underway an on-going, coordinated, multi-agency initiative on Family and Intimate Partner Violence. This initiative is comprised of a wide range of activities whose purpose is to:

- Strengthen the health care system's ability to screen, treat, and prevent family and intimate partner violence;
- Provide education, training, and support for battered women and their families;
- Increase the ability of battered women, including those on welfare, to obtain and retain employment and obtain child support;
- Encourage greater linkages between child welfare, family and intimate partner violence, and criminal justice fields to better protect both children and parents in homes where violence occurs;
- Enhance community prevention and response systems by increasing collaboration between the Department's State and Tribal family violence grantees and the Department of Justice's State and community-based grantees and other community-based groups; and
- Increase the knowledge base about family and intimate partner violence, through data collection and research;

Specific examples of activities related to this initiative include:

- As the commenters recognized, the TANF final rule includes provisions pertaining to the Family Violence Option instituted under PRWORA. The TANF final rule also provides States penalty relief when they fail to meet the numerical standards for time limits and the work participation rates because they provide good cause domestic violence waivers to battered women. It also includes provisions for the reporting of the strategies and procedures the State has put into place to ensure that victims of domestic violence receive appropriate alternative services.
- ACF awarded grants to several States and localities to increase collaboration between domestic violence programs and welfare programs. These grants have been used for training, policy development, and joint intervention responses.
- ACF's Office of Child Support Enforcement (OCSE) has four ongoing grants examining child support cooperation/good cause and domestic violence, and a fifth cross-site evaluation of the projects. The grants will provide additional information about the incidence of domestic violence among child support recipients and ways the child support and domestic violence communities can work collaboratively to meet the needs of battered women.
- OCSE has also been working with States on implementation of the ''Family Violence Indicator,'' an automated flagging mechanism within OCSE's national database, the Federal Parent Locator Service, that will prevent the release of data on battered women.
- ACF has formed an interstate domestic violence working group that is examining a number of issues surrounding domestic violence and child support.
- The Department's Office of the Assistant Secretary for Planning and Evaluation is conducting assessments of State policies and practices regarding domestic violence in the TANF program.

ACF will issue periodic reports and technical assistance materials reflecting the results of these and other activities. For example, the Center for Law and Social Policy, in conjunction with OCSE, recently published ''models of Safe Child Support Enforcement,'' a guide for States and others.

Finally, through the Family Violence and Services Program, ACF also provides grants to all States, all State coalitions, and a number of Indian tribes to provide immediate shelter and related assistance to victims of family violence and their dependents. ACF also funds five national resource centers and the national Domestic Violence Hotline.

Although we are committed to addressing the problems and the often tragic consequences of domestic violence, our task with respect to the high performance bonus was to assess the appropriateness of such a measure in the context of our policy and evaluative framework. In the NPRM, we indicated that we considered a measure looking at the proportion of TANF recipients who received domestic violence services, but we noted that we had identified no objective and reliable data sources for this measure. Similarly, there is no existing source or uniform standards for determining whether a State is meeting federally recognized good cause waiver requirements (especially if it is not penalty-liable), and no existing Federal standards for qualitative measures of service.

After carefully considering the comments and verifying that no data were available to support an outcome rather than a process measure, we decided we would not include a domestic violence measure in the bonus system at this time. Because competition for the bonus is voluntary, we were concerned that additional data collection would be burdensome and would not generate competition—particularly since we had a fixed amount of bonus funds.

We also evaluated the recommendation for including domestic violence as a threshold measure, *i.e.*, only States that adopted the Family Violence Option and met the federally

recognized good cause provisions for domestic violence waivers would be allowed to compete for other bonuses. We have not accepted this suggestion. First, in this final rule, we have dropped the qualifying conditions and qualifying State options as threshold measures in the Food Stamp and Medicaid/SCHIP performance measures, and we decline to add a new threshold measure. Second, the suggested threshold is already used in the TANF penalty reduction process, and, thus, is a substantial incentive for States to adopt these practices in addressing domestic violence under welfare reform.

Nevertheless, we are continuing our efforts to encourage all States to plan pro-actively to meet the needs of victims of domestic violence and their dependents. We will be making technical assistance materials and research results available to States to enhance their efforts to prevent domestic violence and provide services to those in need.

B. Worker Displacement/Worker Protections

In the preamble to the TANF final rule (April 12, 1999, 64 FR 17748), we indicated that we would invite comments on whether to include a worker displacement/worker protection bonus measure during our rulemaking on the high performance bonus. We carried out this commitment in the NPRM when we specifically asked for comments on whether we should ''consider State enforcement of the TANF non-displacement requirements in awarding bonuses, and, if so, how.''

Comments: We received four letters in support of new worker displacement and/or worker protection measures. Commenters recommended the following:

- Require States to provide evidence of anti-displacement measures, *e.g.*, demonstrating the existence of a grievance procedure, either as a threshold measure in order to compete for any high performance bonus measure, or as a threshold measure in order to compete for the work measures.
- Add a new measure based on: (a) Evidence of the integration of TANF, the Work force Investment Act (WIA), and the Welfare-to-Work (WtW) worker protection procedures (*e.g.*, a Memorandum of Understanding with appropriate agencies, providing worker information, and monitoring); and (b) submission of payroll records by employers with significant numbers of TANF employees or review of unemployment insurance records through which displacement might be detected.

These commenters believed in the importance of worker displacement protections in the TANF program and noted that they found that some States have been slow to put procedures into place. They provided one concrete suggestion for data sources. However, adopting this recommendation would have required additional State reporting—an approach that we said we wanted to avoid. One commenter specifically acknowledged that it is difficult to measure displacement accurately.

Additionally, as the commenters also observed, the statutory WIA and WtW requirements in the area of worker protection are more detailed than the statutory TANF requirements; these differences would appear to pose problems for establishing uniform standards.

Response: As we said in the preamble to the TANF final rule, it would not be consistent with the principle of State flexibility embodied in the TANF statute for us to regulate a State's administrative procedures and require States to adopt the more extensive WtW statutory provisions for the TANF program.

Worker displacement is a matter of concern to us, however, and we will be monitoring it through review of information each State provides to us in its TANF annual report. Specifically, a State must include a description of procedures that it has established and is maintaining to resolve displacement complaints. (See 45 CFR 265.9(a)(7).)

At the same time there are no standards available for us to objectively assess the extent and quality of State displacement procedures. Thus, we do not believe that we have adequate criteria or data upon which to base either a threshold or additional performance measure.

C. Child Poverty Measure

In the preamble to the proposed rule, we discussed our consideration of whether to include a child poverty measure in the high performance bonus system. We cited the importance of this matter, our belief that States had the flexibility and resources to make an impact on child poverty, and the connection of a child poverty measure to two of the purposes of TANF: (1) Promoting work and employment; and (2) strengthening child and family well-being by assisting needy children in their own homes or in the homes of relatives. We invited public comment on this issue.

On the other hand, child poverty is an area for which there are other mechanisms in the statute for monitoring and promoting positive State action. Section 413(i) of the Act requires that States report their child poverty rate annually and take corrective action when an increase in the child poverty rate is the result of the TANF program in the State. We published a final rule implementing these provisions on June 23, 2000 (65 FR 39234).

Comments: A number of commenters were concerned that a State could not be performing well if large numbers of already poor children and families were allowed to fall deeper into poverty. One commenter suggested that we add compliance with the child poverty requirements under section 413(i) of the Act as a threshold measure.

The commenters recommended the use of the official poverty measure (developed by the Census Bureau) and suggested possible measurement approaches for our future consideration. They also suggested that when there were economic conditions beyond the control of States, ACF could use rules for setting aside the measure.

Response: We continue to believe that poverty, and child poverty in particular, is an issue of great importance, but we are not convinced that the best way to address the issue is through the TANF high performance bonus award. We considered the recommendation that State compliance with section 413(i) of the Act be added as a threshold measure, but we believe that the several requirements States may need to meet under section 413(i) do not lend themselves to effective inclusion in the high performance bonus system.

D. Other Suggested New Measures

Comment: One national organization recommended the addition of a number of new measures directed at achieving economic independence and self-sufficiency, particularly for women and girls. As a part of their recommendations, they asked that we define the term ''self-sufficiency'' in the final rule, using the Wider Opportunities for Women's ''Self-Sufficiency Standard.'' They believed that this comprehensive standard, which describes how much money is needed to meet a family's basic needs (*i.e.*, for housing, food, child care, transportation, clothing, and related work expenses, calculated by family size on a per county basis) without public assistance, is an accurate and sensible indicator of true self-sufficiency. Without such a measure, they believed that it would be difficult, if not impossible, to accurately and consistently define self-sufficiency for a given family in the United States.

Response: We agree that helping families achieve economic independence and self-sufficiency is one of the most important goals of the TANF program, and we believe that the recommended ''Self-Sufficiency Standard'' is a useful tool in evaluating State and local efforts towards achieving that goal. However, since none of our measures incorporate this term, and any measure based on this concept would entail substantial new data collection, we have not accepted this recommendation.

Comments: A number of commenters mentioned other topics on which new measures might be based, but the commenters' suggestions were general and, for the most part, undeveloped in terms of both design and data sources. One or two letters suggested each of the following topics:

- Diversion from TANF;
- Recidivism, *i.e.*, returns to TANF;
- Savings and asset-building;
- Housing (with the measure to be developed by ACF in collaboration with the Department of Housing and Urban Development, *e.g.*, a measure of the use of TANF funds to provide housing assistance for families moving from welfare to work);
- Transportation, *e.g.*, demonstrating cooperation between the TANF and State transportation agencies;
- Education or training, *i.e.*, the number of teens on TANF attending or completing high school or an equivalency program, or, using performance data under the Carl D. Perkins Vocational and Technical Education Act to determine the skill attainment success rate of public assistance recipients who enroll in advanced education and training programs following job entry;
- Reduction in the incidence of teenage pregnancy through abstinence education and other programs that encourage children to postpone starting a family until married;
- Availability of and utilization of various transitional services, *e.g.*, Medicaid, and transportation;
- Programs to enhance family relationships and reduce family violence;
- Decreases in the number of children in foster care; and
- Child support, *i.e.*, measurement of how many families in transition from welfare to work are receiving payments on child support or payments on child support arrearages; and medical child support, *i.e.*, measurement of the number of children in families that are in transition [from TANF] that have medical support orders as part of their child support order and who are receiving benefits from those orders.

Response: Many of these suggested areas are viable strategies for helping families move toward self-sufficiency. However, most of these suggestions do not lend themselves to the construction of a quantifiable outcome measure; lack an objective, uniform, and reliable data source; or have other problems when viewed in the context of our policy and evaluative framework. In the case of the suggestion regarding child support and associated medical orders, the proposed measure would duplicate the existing incentive and penalty system that is already part of the child support enforcement program.

Comment: Another suggestion, rewarding States for the enactment of a State EITC, had support from a substantial number of commenters. However, none of the commenters was specific about how we might construct an outcome measure. One commenter noted that the existence of a State and local EITC program worked against the State's being able to compete successfully in the proposed family formation measure. Another commenter noted that enrollment in EITC is a difficult measure to document.

Response: We agree that an EITC program can be a major support to families working towards self-sufficiency. At the present time, however, approximately ten States administer State EITC programs. We believe that, to be a meaningful incentive, the high performance bonus system should offer all States the opportunity to compete on all of the measures. Thus, we have not accepted this suggestion.

E. Recommendations for Other Approaches to the Design of the Bonus System

We received a few additional recommendations and suggestions to which we wish to respond.

Comment: A commenter recommended that DHHS adopt an overall high performance award that would be given to the top one to three States that exhibited overall outstanding success in meeting the TANF goals. They argued that such a bonus award was needed to overcome various shortcomings in the proposed system, *e.g.*, rewarding States for one area of performance when they fell short overall, giving awards in areas of performance where all States were experiencing only mediocre success, and having the unintended effect of encouraging States to take a narrowly focused approach to welfare reform in order to achieve the specified rewards. Such a measure was needed, they believed, to measure performance with respect to all poor families in the State, not just the segments of the population covered by the proposed bonuses.

The commenter recognized the lack of currently available data that could be used to support such a measure, but suggested that we could develop such data. They gave examples of factors that we could measure in an overall bonus but did not go into detail regarding the data that would need to be developed. Rather, they suggested an alternate approach of letting individual States choose multiple areas in which they wished to compete.

Response: We have not accepted this recommendation for a number of reasons. As the commenter pointed out, data are limited and would have to be developed in order for the measure to be workable. From a logistical standpoint alone, new information sources could not be developed in time to be implemented for the 2002 award year.

We believe the measures in the final rule permit an overall high performing State to compete successfully on several of the measures and to receive a commensurate monetary award. At the same time, a statutory cap on the total award a State can receive in a year provides a deterrent to any misplaced incentive to over-focus on certain aspects of welfare reform that might be generated by the proposed system of bonuses.

In addition, having States compete for an overall bonus that encompasses items of their own choosing would not only be exceedingly complex, but would be a challenge to objectivity. Also, based on our experience in awarding the FY 1999 bonuses, we did not identify a large number of States winning on certain measures that exhibited only mediocre success on other measures.

Comment: Two commenters suggested new bonuses based on innovative or extraordinary practices. One commenter encouraged bonus awards for ''extraordinary practices that lead to quality achievement in advancing the goals of TANF.'' Similar to the previous comment, the commenter noted that this approach would recognize individual programs that show promising results but do not directly contribute to a State's performance in the specific bonus categories. The commenter also noted that this approach would serve to reward individual efforts in States ''that, for various reasons, may not be able to compete well in the specific categories.'' One commenter also suggested a separate measure that ''rewards states for implementing policies or programs that address a particular need in their

state.'' The State would identify a specific category of client need and submit an explanation of how the State responded to the need.

Response: While we agree that innovative or extraordinary practices deserve to be recognized and promoted, a high performance bonus award for such practices would not meet the statutory requirements for comparing and ranking States and awarding bonuses based on a formula. In addition, such a bonus would focus on process rather than outcomes.

ACF has in place a strong system of peer technical assistance that serves to recognize promising practices. The Welfare Peer Technical Assistance Network provides guidance and instruction to States on promising practices for moving welfare and low-income families to self-sufficiency. It provides information to States about TANF program resources and increases communication among the States about promising practices. Access to this Network is available at: http://www.calib.com/peerta/.

Comment: In response to a question we posed in the NPRM regarding whether we should consider thresholds (such as denying a bonus to a State that was subject to a work participation or other noncompliance penalty), one commenter suggested that a competing State should not be in a penalty situation of any kind. The commenter stated that the purpose of the bonus is to reward high performing States and that penalties indicate a failure to perform in some way.

Response: Although we specifically solicited comments on whether we should consider such a threshold measure, we received only one recommendation that we do so. We gave this proposal serious consideration and concluded that potential for delay in the due process provisions for TANF penalties would make the recommendation difficult to implement, *i.e.*, to match the penalty year with the performance year for the bonus. We also foresaw other implementation issues, such as how to treat States under corrective compliance plans and whether to take into account the severity of a penalty.

Comment: A national organization recommended that the Department ''collect and evaluate data broken down by race and ethnicity for all components of the high performance measure, and move towards the ultimate goal of assessing states' efforts to eliminate racial, ethnic, or other disparities in their welfare programs.'' To support this proposal, the commenter cited various studies that reported disparity in treatment of various population groups and in their success in leaving the welfare rolls. The commenter said that ''states should not be rewarded if their programs treat certain groups of clients differently,'' but should be rewarded ''for working proactively to address the different needs of different communities and to correct problems that may occur in their programs.''

The commenter recommended that ACF could use the data sources proposed in the NPRM since they either contained race/ethnicity variables or could be matched with a data source, such as TANF data, that contained the variables. The commenter acknowledged, however, that there could be additional reporting burden and that ''states are the only entities in a position to perform the matching of data to determine whether certain groups are faring worse than others.'' The commenter urged DHHS to explore ways to incorporate the results of the various studies and analyses into the bonus system.

In addition, the commenter suggested that DHHS ''use any statistically significant racial or ethnic disparity of outcomes as a factor in evaluating the state's performance the following year,'' *i.e.*, to show improvement in the disparity as a threshold measure for competing in the measure in which the disparity occurred.

Response: We agree with the importance of equitable treatment of various welfare populations. The Department has demonstrated its strong commitment to fair and equitable treatment of individuals in the welfare population. For example, in August, 1999, we provided governors and State TANF administrators with comprehensive written technical assistance to help them understand the application of Federal civil rights laws in the implementation of welfare reform. We have also worked on developing technical assistance to clarify the responsibilities of health and social agencies that receive Federal funding in fulfilling their responsibilities to persons of limited English proficiency, pursuant to title VI of the Civil Rights Act of 1964.

We also believe that, if it were feasible to secure adequate data, there may be factors beyond a State's control when there are disparities in the outcomes among welfare sub-populations. Immigration and refugee resettlement patterns are examples of factors that are beyond State control. Thus, it would be difficult to construct a measure that would be fair to States. The commenter did not assess the availability and interaction of racial/ethnic data for the various measures. Without doing a full analysis, we were also concerned that the suggestion might require that States conduct additional data collection and analysis. For these reasons, we have decided not to add a performance or a threshold measure based on racial/ethnic disparities.

Former Section 270.4(e), Now New Section 270.4(f) Measure of Family Formation and Stability

In the overview section above (IV.C. Overview of Comments on the Family Formation Measure), we described our continuing efforts to develop an outcome measure related to family formation and our commitment to including in the high performance bonus system measures to address the non-work purposes of the statute. In addition, we summarized the public comments on, and the objections to, this proposed measure and our rationale for retaining the measure in the final rule.

By including this measure in the final rule, we want to emphasize that our primary focus is on the second statutory purpose of TANF, *i.e.*, ''* * * to promote marriage.'' At the same time, including this measure in the high performance bonus does not preclude State efforts to support two-parent families or responsible fatherhood activities for parents who are not married. Nor does the focus on this measure preclude parents making responsible choices that best meet their needs and the needs of their children.

We have made one substantive change in this measure. In response to comments, we will base this measure on a universal population, *i.e.*, the increase in the percentage of all children in the State who reside in married couple families, regardless of income. Given the remaining issues, we have also reduced the allocation for this measure to $10 million. In addition, we have made one clarifying and one technical change in this section: We have clarified that we will rank only those States who wish to compete on this measure and added the provision that we will measure performance based on percentage point change rather than the percentage change.

We want to respond more specifically to some of the commenters' major concerns.

Comment: A number of commenters objected to the proposed use of a quantitative measure (promoting marriage) while ignoring the more qualitative goal of ''encouraging the formation of two-parent families,'' *i.e.*, purpose four in the statute. They noted that, under the proposed measure, stable but less traditional families, such as

separated families, common-law families, same sex families, or two related adults living together would not be counted for bonus purposes. In addition, they pointed out that DHHS had supported the qualitative position in policy guidance by encouraging both parents to meet parental responsibilities whether they are married and live together or not.

Response: Although we explored a possible measure based on ''two-parent families,'' we were constrained by the lack of available data. The Census Bureau, our source of data for this measure, does not collect information on two-parent families as a category but does collect information on married couple families. We recognize the diversity of views on this issue, but point out that the second purpose of TANF includes the promotion of marriage. In using this measure in the bonus system, we are not intending to diminish our strong support for responsible parenthood, regardless of parental living arrangements. We also reward States that support and encourage responsible parenthood by non-custodial parents through the child support program and its incentives.

Comment: Some commenters objected to the design of the proposed measure. They observed that the measure appears to reward States for increasing the number of children in poverty in married couple families; it will not reward States when a married couple's income exceeds 200 percent of poverty. Further, States that are successful in encouraging single parents to marry might be less likely to receive a bonus since single mothers usually improve their economic situation when they marry.

Response: We agree with commenters that the proposed measure, based on the percent of children below 200 percent of poverty who reside in married couple families, raises programmatic and measurement issues. We believe the change we have made in the final rule, *i.e.*, to measure the percent of all children in the State who reside in married couple families, will address these concerns. It also makes this measure more consistent with the out-of-wedlock birth bonus which, by statute, is based on all out-of-wedlock births and not just those to low-income mothers.

Comment: A number of commenters believed that the proposed family formation measure, like the proposed Food Stamp measure, was dissociated from the TANF population and State efforts to help TANF families become self-sufficient. Rather, they believed that it would merely reward States for changes in State demographics or fluctuations in the State economy. In addition, some commenters envisioned negative consequences to families as a result of coercive actions a State might take in order to compete for the bonus.

Response: We believe this bonus provision may be an incentive to States to increase their attention to some of the non-work purposes of the TANF program, *i.e.*, purposes that go beyond the population receiving TANF assistance. We agree that this is a new program area for many States, and we believe that States will respond by reducing barriers and developing new activities to support marriage and strengthen families. The universal measure in the final rule addresses the concern about fluctuations in the States' economy.

Some of the recent steps ACF has taken will help us track State efforts to meet the family formation goals of TANF. First, under the provisions in the final TANF rule, published April 12, 1999 (64 FR 17720), the new fiscal reporting form (ACF–196) will capture expenditures on ''Two-parent family formation and maintenance activities.'' This will help us determine which States are making the biggest investments in this area.

Second, the new annual report from States will include summaries of State programs and activities directed at the third and fourth purposes of the TANF program (see 45 CFR 265.9(a)(8)). We anticipate that this information will provide leads about promising practices that we can share among States to encourage innovation and increase efforts in these areas. It might also provide leads about policies or practices that merit further review.

Third, in the summer of 1999, we issued a TANF funding guidance document entitled ''Helping Families Achieve Self-Sufficiency.'' This document provides several examples of family formation activities that States could undertake to encourage and reduce barriers to marriage, funded with Federal TANF or State MOE funds, *e.g.,* providing premarital and marriage counseling and mediation services, and changing State TANF eligibility rules to provide incentives for single parents to marry and/or for two-parent families to stay together.

Finally, recent results from a rigorous evaluation of the Minnesota Family Investment Plan found that a program combining generous work incentives with work requirements significantly increased the proportion of married families for both two-parent recipients and single-parent, long-term recipient families.

Comment: A few commenters objected to this proposed measure because it did not meet the principles outlined by NGA and APHSA, *i.e.,* that it did not minimize double jeopardy or reward. They believed that there was a very narrow distinction between the proposed measure of the out-of-wedlock birth bonus in section 403(a)(2) of the Act. Some commenters urged us to develop a measure to reward reductions in teen pregnancies instead of the family formation measure.

Response: We believe the out-of-wedlock birth bonus and the family formation measure are sufficiently different in focus so as not to violate the principle of non-duplication. For example, the out-of-wedlock birth bonus focuses on all births, in conjunction with the abortion rate in the State, while the family formation measure focuses on children of all ages, including newborns. In addition, the out-of-wedlock birth bonus addresses the third purpose of TANF (preventing and reducing the incidence of out-of-wedlock pregnancies) while the family formation measure addresses the broader goal of promoting job preparation, work, and marriage.

We had previously devoted considerable thought to the question of whether we should include a teen pregnancy measure because this question came up in our earlier consultation with the States. While the Centers for Disease Control and Prevention and the Alan Guttmacher Institute both publish State-level teen pregnancy data, some of these data are based on estimates because teen abortion data are not available for all States, and we did not consider these figures sufficiently reliable for the purpose of awarding bonuses.

In the areas of teen pregnancy prevention and out-of-wedlock childbearing, we have sought to focus more State attention on the pregnancy prevention goals of TANF. First, we believe the new reporting form (ACF–196) and the annual reports from States will provide information on promising State practices that we can share to encourage innovation in this area. The TANF funding guidance (''Helping Families Achieve Self-Sufficiency'') also provided several examples of pregnancy prevention activities that States could undertake with Federal TANF or State MOE funds.

In addition, the Department has continued its efforts to improve State and national outcomes in these areas. The latest national data show continued success in reducing the teen birth rate (which dropped 20 percent between 1991 and 1999). The 1999 rate of births

to all unmarried women has dropped six percent from its peak in 1994, and the birth rate for unmarried teens dropped 11 percent from its peak in 1994 to 1998, based on the most recent available data.

On April 14, 1999, we issued the final regulations on the bonus to reward States with the largest decreases in their out-of-wedlock childbearing. On September 13, 1999, Secretary Shalala announced the first five winners of that bonus: Alabama, California, the District of Columbia, Massachusetts, and Michigan. Each received $20 million. The reductions in their out-of-wedlock birth ratios ranged from 1.5 to 5.7 percent.

Prior to these issuances, the Department had undertaken a number of initiatives directed at reducing out-of-wedlock and teen pregnancies.

• In 1995, the Department produced the *Report to Congress on Out-of-Wedlock Childbearing*, and *Beginning Too Soon: Adolescent Sexual Behavior, Pregnancy and Parenthood*—both of which contained valuable information about the occurrence of out-of-wedlock and teen pregnancy as well as strategies for addressing these concerns.

• In 1997, the Department developed the National Strategy to Prevent Teen Pregnancy, as required in section 905 of PRWORA. The Department has released three annual reports to Congress since then. Among other things, the 2000 report noted that HHS has funded teen pregnancy prevention programs in at least 35 percent of communities across the country and listed more than 20 Departmental programs aimed at educating teens and preventing pregnancy (including Girl Neighborhood Power! and demonstration grants to 13 communities in 11 States funded through the Centers for Disease Control and Prevention Community Coalition Partnership Programs).

• The Department, in partnership with the National Campaign to Prevent Teen Pregnancy and Johnson and Johnson, has developed ''Get Organized: A Guide to Preventing Teen Pregnancy.'' This publication stresses a localized approach, a long-term commitment, and careful evaluation. The Department will be disseminating additional information to communities regarding programs that specifically target boys and young men.

• The Department has been administering the State Abstinence Education Program, as authorized by section 912 of the PRWORA. This program authorizes $50 million per year beginning in FY 1998. Every State applied for this money to build on its efforts to prevent teen pregnancy in FY 1998 and FY 1999 (although New Hampshire declined its funding for FY 1998 and California did not draw down its 1998 or 1999 grant). For FY 2000, all States applied for an abstinence education grant except California. As mandated in the Balanced Budget Act of 1997, the Department is conducting an evaluation of a selected number of sites receiving funding under this provision.

• The Department is actively supporting expanding pregnancy prevention efforts to include a focus on boys and young men.

• The Department's Regional Offices have awarded $2 million in small grants to Title X Family Planning Clinics to develop pilot programs designed to prevent premature fatherhood. These projects employ male high school students as interns to provide them with on-the-job training in clinic operations and allied health occupations and provide education about male responsibility, family planning and reproductive health.

• In addition to these initiatives, the Department supports other research efforts, including the National Study of Adolescent Health, the National Survey of Family Growth, and the National Survey of Adolescent Males, which have all provided important insight into adolescent risk behaviors including sexual activity and response to pregnancy.

New Section 270.4(g) Option to Compete

Under the NPRM, we proposed to rank only the competing States for the work measures, but to rank all States that met the qualifying conditions for the Food Stamp and the family formation measure, based on Census Bureau data.

Comment: A number of commenters objected to not being given the option whether to compete on all measures.

Response: In the final rule, we have added new language in §§ 270.4 (c), (d), (e), (f), and (g) and § 270.6(c) to make it clear that States have the option whether to compete on all measures. Under § 270.11, each State must submit to us a list of the measures on which it is competing by February 28 of each bonus year.

Section 270.5 What Factors Will We Use To Determine a State's Score on the Work Measures?

In § 270.5 of the NPRM, we proposed definitions of the four work measures and a description of the factors that we would use to determine a State's score on the work measures. We also proposed that States could compete on one, any number of, or none of these work measures. We would score and rank competing States and award bonuses to the ten States with the highest scores in each measure.

The four work measures are: Job Entry; Success in the Work Force (Job Retention and Earnings Gain); and improvement from the prior fiscal year in each of these measures. We would use the proposed measures to measure State performance along three parameters of employment: the extent to which States are moving recipients into the work force; the degree to which recipients are able to remain in the work force; and the degree to which their earnings increase over time.

The comments were strongly supportive of our proposed work measures, although a number of commenters suggested substantive and technical modifications or recommended the addition of threshold measures. A few commenters opposed some of the measures. Briefly, we made the following changes in the final rule in response to comments:

(1) Revised the calculation of the improvement measures to measure percentage point improvement rather than percentage improvement in § 270.5(a);

(2) Revised the calculation of the State rankings in § 270.5(b) to drop the proposed double-weighting of the job retention sub-measure—thus giving both sub-measures equal weight;

(3) Dropped the distinction on what kinds of subsidized jobs count under the work measures;

(4) Streamlined the description of the ranking procedures in § 270.5(b);

(5) Clarified that we will award bonuses only to States with positive scores; and

(6) Clarified how we will rank States on the increase in success in the work force improvement measure.

Following is a discussion of the comments we received, by issue.

A. Establishing a Performance Threshold

The NPRM did not specify a level of earnings or other threshold factor that a TANF recipient would need to achieve in order for the State to count the individual in the job entry, job retention, or earnings gain measures. Thus, as little as one dollar of earnings in a quarter would count in determining who entered employment, how long they remained employed, and how much their earnings increased.

Comment: Some commenters suggested that we tie work measures to a minimum threshold, e.g., that we count only those persons whose wages are at the poverty level or above the

minimum wage. These commenters reasoned that the proposed measures reward States that place recipients in jobs without regard to how long they will last or whether they move the family towards self-sufficiency. One commenter suggested a specific threshold factor, i.e., that at least 50 percent of those who leave TANF be employed at wage levels above poverty one year after leaving TANF.

Two commenters recommended that we link job entry with success in the work place. They asserted that a State could receive bonus grants for moving TANF recipients into work and at the same time have a dismal record regarding recipients' remaining employed and/or earning a livable wage that would propel them out of poverty.

Several commenters recommended that we establish a threshold requiring a minimum percentage of expenditures to be spent on education and training or requiring the full use of Federal programs, *e.g.*, the Work Investment Act (WIA) and Welfare-to-Work (WtW) programs, before we would consider a State for a bonus on a work measure.

Response: It is our intention, and many commenters agree, to reward the statutory work purpose of TANF across a wide range of part-time and full-time work. We take account of how good the jobs are with the success in the work force measure. We have not established an earnings threshold in the final rule because there is currently insufficient baseline information for selecting a threshold. We believe a threshold should be high enough to foster placement in substantive jobs, but not so high as to disadvantage States with large numbers of recipients with significant employment barriers or substantially more difficult labor markets. We may consider adding an earnings threshold (*e.g.*, a minimum amount of quarterly earnings based on the NDNH reporting), after further analysis and consultation with States and other interested parties.

We do not agree with the commenters' recommendations that we establish a threshold requiring a minimum percentage of expenditures to be spent on education and training or requiring the full use of Federal programs, *e.g.*, the Workforce Investment Act (WIA) and Welfare-to-Work (WtW) programs, before we would consider a State for a bonus on a work measure. Such a threshold would hinder a State's flexibility in designing its TANF program and would not be a measure or indicator of outcomes.

B. A More Rigorous Job Retention Measure

In the definition of ''job retention rate,'' we proposed a job retention period of six months, *i.e.*, States could count those individuals employed in one quarter who remain employed in the next two consecutive quarters.

Comment: There were a number of comments in support of extending the retention measurement period; only one State commenter recommended a shorter retention period. Most of these commenters supported extending the retention measure to one year, but other recommendations included an 18 month period or a longer period, if possible. In general, they believed that six months is too short a period of time to demonstrate that an individual has achieved job stability. Other specific suggestions ranged from extending retention to the sixth tracking quarter, or measuring retention only in the same job unless the change is to a job that pays a higher wage, offers enhanced benefits, or promotes job stability or career growth. The latter suggestion did not include a specified period of time for measuring retention.

Response: After careful consideration of the comments, we did not adjust the retention period. We proposed in the NPRM that job retention be measured in the initial quarter and the two consecutive subsequent quarters, in part, because this is similar, though not identical, to measures of job retention in the WIA and WtW programs. We continue to believe that job retention over six months is a reasonable indication of stable employment. In addition, an extended retention period would delay when critical performance data would be available. Given the lag in data availability, the longer time frame would not allow us to make the bonus awards in the bonus year to which they apply. Further, if we did not issue the FY 2003 bonus funds by September 30, 2003, they would return to the Treasury, unless Congress reauthorizes the bonus and appropriates funds.

We also considered the suggestion that we measure retention in the same job, but decided against it because, moving to another job can, in fact, represent moving up to a better job. In addition, tracking job characteristics, other than wages, *e.g.*, benefits, would be extremely burdensome, if not impossible.

C. Success in the Work Force Measures

In the NPRM, we proposed a ''success in the work force measure'' that combined the performance scores of two sub-measures, *i.e.*, job retention and earnings gain. We proposed a combined measure because of the linkage between these two outcomes, *i.e.*, with earnings gain viewed as dependent on an individual's success at retaining employment. In ranking and combining the scores of these measures, we proposed a double weight for the job retention measure. We also proposed to measure the change in the earnings for those employed in one quarter who were also employed in the second subsequent quarter.

Comment: Several commenters thought that we had not given sufficient weight to earnings gain. Commenters also recommended that we:

- Treat earnings gain as a separate measure instead of incorporating it into the success in the work force measure;
- Measure earnings gain at both six and 12 months;
- Adjust the earnings gain for the cost of living in each State using the HUD fair market rent amount;
- Measure only full quarters' earnings; or
- Allow administrative data on a voluntary basis as a source of earnings.

Response: Several commenters questioned why we weighted the job retention submeasure at twice the rate of the earnings gain submeasure and recommended that we give each measure equal weight. They believed earnings gain is a better indicator of stable employment and a key component to achieving economic independence.

For the reasons expressed by the commenters and, after further analysis of the available data, we agree that job retention and earnings gain should be weighted equally in developing State rankings. We have made this change in § 270.5(b).

We agree that separate measures for both job retention and earnings gain would provide a discrete focus and reward for each measure. Job retention is an important measure of success in transitioning from welfare to work. It is correlated with long-term employment stability, *e.g.*, the longer an individual remains employed the more opportunities there are to acquire specific job skills and refine successful work habits. However, we also believe that job retention and performance in earnings gain are directly linked in the work world. Research in this area has shown a correlation between persistent work force attachment and earnings. We also believe that de-linking these measures could create perverse incentives for States, *e.g.*, to focus on placement and retention of recipients in any job without regard to the quality of

the job or to ''cream'' in order to show larger earnings gains. Finally, creating a separate earnings gain measure would result in fewer bonus dollars for any one work measure.

Therefore, we have retained the link between job retention and earnings gain in order to focus attention and resources on both. Helping people rapidly get employed, remain employed, or enter higher paying jobs after training and progress to even higher paying jobs are all important strategies. States may choose to emphasize different strategies at different times, depending on their populations, goals, and economies.

Several commenters recommended that we measure earnings gain at both six and twelve months. We did not want to make this change for essentially the same reasons we did not want to extend the retention rate to twelve months, *i.e.*, it would delay obtaining critical data for analysis and impede our ability to award the bonus in the bonus year.

In addition, we have not accepted the comment to adjust the earnings gain sub-measure based on the cost of living in each State using the HUD fair market rate amount as this would add a level of complexity that would counter one of our basic principles, *i.e.*, to maintain simplicity. First, it is not clear that differences in earnings directly track differences in fair market rent. More importantly, it is not clear that differences in the cost of living would make any difference in the comparison of earnings gains between States. Because we are measuring an increase in earnings in a single State from the reporting quarter to the second subsequent quarter, differences in the cost of living among different States would not be relevant. It is not the absolute difference between earnings in different States that is relevant, but the percentage point difference of the change in earnings amount from one year to the following year in the same State. Thus, a State would not be advantaged or disadvantaged by having a higher or lower cost of living than other States.

We also did not accept the recommendation to measure only full quarters' earnings because that would require a substantially increased data collection and reporting burden on the States. Because Unemployment Insurance (UI) and NDNH records do not indicate whether earnings reflect a full quarter of employment or not, we would have to establish a proxy measure, require States to collect and submit administrative data, or conduct new surveys. Also, allowing States to submit administrative data on a voluntary basis would not be helpful because we believe that the bonus awards must be based on data that are uniformly available and comparable across States.

Finally, although we received no comments on this matter, we have clarified how we will calculate scores, rank States, and award bonuses for the increase in success in the work force measure. First, we will award bonuses only to States with a positive improvement score on at least one of the sub-measures. Second, we will not exclude a State with a negative score in calculating a rate and ranking States on this measure. For example, a State may have a negative score on one sub-measure (*e.g.*, job retention) and a positive score on the other sub-measure (*e.g.*, earnings gain). We have added language in § 270.5(a)(4) to specify that we will award bonuses only to States that achieve a positive percentage point difference on at least one sub-measure between the rate for the performance year and the comparison year.

D. Sustained Employment Rate

Comment: Two organizations suggested a somewhat different approach to the proposed work measures. Their approach would create a ''sustained employment rate,'' a separate earnings gain rate, and a new measure of the earnings gap for poor families in a State.

They recommended that we develop a single sustained employment rate in lieu of the job entry and job retention rates. The base (denominator) for the sustained employment rate would be all TANF adult recipients except those engaged in employment with earnings equal to or greater than an average of twenty hours per week for the quarter multiplied by the Federal minimum wage. A recipient would be counted as a ''sustained employment recipient'' if the recipient has at least two consecutive quarters with earnings at or above the threshold noted above during the next year. The earnings gain rate would be measured over a one-year period beginning after the initial quarter of employment where the earnings are at or above the earnings threshold in the measurement quarter, *e.g.*, quarter two and quarter six.

Under the earnings gap measure, the difference between the amount of earnings for poor families with children in a State and the official poverty level would be determined. We would rank States on their success (improvement) in closing that difference. We would also make adjustments based on changes in unemployment rates and changes in the number of families in the measurement period.

Response: These recommendations would result in a significant change in the work performance measures, add a high degree of complexity, and substantially increase the data collection burden. Further, because the ''sustained employment rate'' recommendation does not differentiate between the unemployed and the underemployed, it would result in the loss of information on the number of adult recipients entering employment for the first time in a year. The suggested time frames for these recommendations would result in the issuance of the bonus awards well after the end of the bonus year. In addition, most commenters supported staying within the existing framework for the work measures. For these reasons, we are not adopting this proposal.

E. Subsidized Work

In the NPRM, we proposed to count only jobs that were not fully subsidized in order to focus on jobs that were likely to lead to self-sufficiency.

Comment: Several commenters suggested that we count fully subsidized jobs, or at least exclude them from the denominator as well as the numerator. They contended that, unlike community experience and work experience, wage-paying subsidized jobs resemble unsubsidized employment in every aspect, except for the subsidy paid to the employer. Another commenter recommended that we link work experience and subsidized work with the provision of ancillary services such as education and training. One commenter suggested that we clarify that, while subsidized work would not be counted, ''supported'' work would be, since ongoing funding is provided to the job coaches rather than to the individuals' wages.

Response: First, ''supported'' work currently is counted in the calculation of the work measure. Second, we have decided to count wage-paying, fully subsidized jobs in the numerator and the denominator of the work measures in the final rule. We have made this change because we believe the numbers are small, and we recognize that the distinction between partially and fully subsidized employment is somewhat artificial and is governed by changes based on the wage rate of the individual TANF recipient. We also believe that this change will reduce the burden on States as they will not need to separate out and report different types of subsidized jobs. We also note that community service and work experience ''jobs'' would also count to the extent that wages are actually paid and

reported to the State Employment Service agency.

F. Measuring Improvement

In the NPRM, we proposed to award bonuses to the States demonstrating the greatest improvement in job entry and success in the work force. We proposed to measure the percentage increase from the comparison year to the performance year.

Comment: There was strong support for the improvement measures, including one commenter who expressed the view that we should use only improvement measures, in order to give States more incentive for continuous progress, and to give all States an equal chance of earning a bonus, regardless of their starting point.

Another commenter, however, recommended that we should use only absolute measures or reduce the amount of the awards for the improvement measures because States that have been high performers in the past would have little room for improvement. They believed that the proposed method of calculating the performance improvement rate for job entry and the success in the work force measure (combination of job retention and earnings gain) did not take into consideration the past performance of States that had implemented welfare reform early. These commenters indicated that States were disadvantaged if they had achieved earlier success in moving recipients from welfare to work and self-sufficiency that would not be measured. In addition, such States' remaining caseloads have a higher proportion of recipients that have significant employment barriers. Commenters made the following recommendations:

- Adjust the proposed method of calculating the improvement rate, *i.e.*, average the comparison and performance year rate scores and add the percent change between the two years to the average score.
- Set a minimum target for improvement, *e.g.*, ten percent, and make awards to all States that met the target without limiting the number of States that could receive an award.

Response: The bonus awards are based on current performance. Even for the improvement measures, we assess the level of current performance in relation to the immediately preceding year. Because the statute specifies the performance year for each of the bonus years, it is not clear that the recommendations are consistent with either that statute or Congressional intent. Further, even if we agreed with the argument that we should consider past performance (prior to the FY 1997 comparison year), there is no objective way to provide for such an adjustment, because we do not have access to data for prior-year periods.

Finally, we recalculated the FY 1999 bonus improvement scores based on the recommended adjustment formula and found that it had the effect of narrowing the range of the improvement scores and had some limited impact on bonus winners. There was only a modest change in the improvement rate ranking of ''early reform'' States, based on this recommended approach. For these reasons, we have not adopted the suggestion to consider past performance earlier than the comparison year.

We also have not accepted the recommendation that we establish a minimum target for improvement largely because caseloads are changing. With the available baseline data it would be difficult to determine a reasonable goal, especially over more than one bonus year.

However, in § 270.5(a) and (b)(3), we have changed the method of calculating the improvement rate. Specifically, we have decided to use the percentage point change instead of the percentage change. For example, under the NPRM, a State that went from a 50 percent to a 60 percent job entry rate would have an improvement rate of 20 percent ((60% − ;50%)/50%=20%), while a State that went from a lower base of 40 percent to a 50 percent job entry rate would have a bigger increase, *i.e.*, 25 percent ((50% − 40%)/40%=25%). Under the final rule, these same States would have identical improvement rates of ten percent (60% − 50%=10% and 50% − 40%=10%). We believe this new approach will reward substantial improvement rather than relative improvement and will raise expectations about the level of improvement required to receive a bonus, particularly among States whose baseline performance was low.

G. Leveling the Playing Field

We stated in the NPRM that we believed that competition for the high performance bonus should primarily reflect a State's welfare to work strategies and should be a competition among States that is objective and fair. We indicated that there are factors over which the State has little control, such as the health of the State's economy, the demographics of its TANF caseload and its resident population, and State population growth. We asked if we should attempt to develop adjustment factors in order to ensure an objective and fair competition.

Comment: There were two comments suggesting that we level the playing field to take into account such factors as economic, demographic, and cultural differences. We did not receive any specific proposals.

Response: We believe that by incorporating both absolute performance and performance improvement measures, we have helped produce a more level playing field for States competing for the high performance bonus. Further, by changing from a percentage increase to a percentage point increase to measure improvement, we have struck a balance between recognizing past performance and encouraging improvement from a low base.

The adjustment of performance scores by external factors would be a complex and difficult task involving the establishment of a correlation between external factors and the performance being measured and, if a strong correlation was detected, determining the scope of the adjustment. Also, such adjustment(s) could add a level of subjectivity and contentiousness to the performance system beyond the value of potentially leveling the playing field.

Nevertheless, in order to test whether we could detect a correlation between certain external factors and the work measures, we performed regression analysis using job entry rate performance and such factors as the unemployment rate, recipient characteristics, and TANF payment levels. (We chose job entry rate performance because we thought State performance under this work measure would more likely be influenced by external factors.) Our analysis showed that none of these factors was highly correlated with job entry rate. In fact, the highest correlation coefficient was −0.28 for the unemployment rate. Thus, the implication is that these specific factors do not determine the job entry rate to any significant degree. In addition, adding adjustment factors makes it much more difficult to explain performance and for States to set meaningful targets. Therefore, we have decided not to make any adjustments to the way we calculate job entry or any of the other work measures based on economic, demographic, or other factors.

H. Other Comments and Recommendations

Comment: One commenter recommended that we should measure all those served, not just those receiving TANF cash assistance.

Response: We have not limited the population we are measuring with the

work measures to just those currently receiving cash assistance. We also include all individuals receiving TANF ''assistance'' as specified in § 260.31 of the TANF final rule, *i.e.*, primarily cash assistance. We also look at work-related outcomes for those who received cash assistance in a prior period. There is no practical way that we could include all those served, regardless of whether they are receiving assistance, *e.g.*, diverted individuals. Such a change would involve a major new data collection effort and impose a substantial burden on the States.

Comment: In response to a series of questions we posed, one commenter recommended that we should include core measures, while another suggested that States should have to compete on a universal set of measures.

Response: We have not required any core measures or a universal set of measures because we want to allow States maximum flexibility to elect the areas in which they will compete. We believe this is consistent with the flexibility provided States in the operation of their TANF programs and the voluntary nature of the high performance bonus.

Comment: Two commenters indicated that some States have expressed concern over the current method of calculating the job entry rate. They suggested instead that the measure should be the percent of the total recipients in the current quarter employed for the first time. No reason was given for wanting this change.

Response: It is unclear what the commenters would change in the proposed method for calculating the job entry rate. Under our proposed method, the denominator is the unduplicated number of adult recipients who were unemployed at some point during the year, and the numerator is the unduplicated number of job entries. We believe the commenters are proposing to change the denominator to either employed adult recipients or to all adult recipients. This suggested change would significantly alter the job entry measure. The purpose of this measure is to determine the extent to which unemployed adult recipients enter employment for the first time in the year as a percentage of those who are unemployed. The suggestion, if adopted, would result in a different focus, *i.e.*, of the adult recipients who are employed, how many are new job entries or, of all adult TANF recipients (employed or unemployed), how many are new job entries. We continue to believe that the appropriate focus for this measure should be on the impact of States' efforts on its unemployed caseload. For this reason, we have not made this change.

Comment: One commenter suggested that because research has shown that many TANF recipients attain and lose jobs several times, that we should reward States for job entries over a longer period of time, such as a two-year performance period. Specifically, for the job entry measure, the commenter indicated that we should count only job entries that are the first job entry in a two-year period. They proposed that retention would then be measured from the point of job entry to a time period one year later.

Response: Given the lag in data availability, the longer time frame would not allow us to make the bonus awards in the bonus year to which they apply. If we did not issue the FY 2003 bonus funds by September 30, 2003, they would return to the Treasury, unless Congress reauthorizes the bonus program and appropriates funds. In addition, the statute requires that we award bonuses for a single performance year, not over a two-year period.

Section 270.6 What Data for the Work Measures Must a State Report to Us? (Title of This Section in the NPRM.)

Section 270.6 What Data and Other Information Must a State Report to Us? (Title of This Section in the Final Rule.)

In the NPRM, we proposed that the State, if it chose to compete on any or all of the work measures, must report one of two alternative sets of data, as specified by the Secretary. In one alternative, the State would provide three items of identifying information on its adult TANF recipients that we would match against the NDNH data. In the second alternative, the State would provide actual performance data for the work measures based on data matches with State UI records or other records. We also specified the SSP-MOE reporting requirements.

We have broadened the content of this section in the final rule. In paragraph (a), we specify the data a State must report if it wishes to compete on the work measures. In paragraph (b), we specify that a State must report data on SSP-MOE programs in order to compete on any high performance bonus measure. In new paragraphs (c) and (d), we specify the data a State must report if it wishes to compete on the Medicaid/SCHIP measures and/or the child care measure. Finally, in paragraph (e), we have retained the requirement (paragraph (d) in the NPRM) that each State must notify us regarding which measures it will compete on in each bonus year.

Comments: Regarding paragraph (a) and the data States must report on the work measures, most commenters supported reporting minimal information on recipients and the use of the NDNH. A number of States believed strongly that no other source could provide Federal employment and out-of-State employment. However, a number of commenters raised issues about the use of NDNH data. Several questioned whether the NDNH contains all the necessary information to calculate the performance scores for all the work measures. One raised concerns about privacy protection of the NDNH data. Two wanted to use State administrative data to supplement the NDNH data, since we could not detect a period of unemployment within a quarter through the use of NDNH quarterly wage data.

Response: After considering the comments and other factors relating to our operational use of the NDNH, we agree with commenters that State reporting of minimal identifying information on all adult TANF recipients and a match of this information by ACF at the Federal level would result in the least burden to States and the maximum accuracy in implementing the bonus awards.

We have not specified the identifying information that States must submit in § 270.6(a). Rather, because some operational factors are unclear in our use of the NDNH, we will specify these data in program guidance. The data that will be required will be limited to some or all of the information proposed in the NPRM, *i.e.*, the name, date of birth, and social security number of all adult TANF recipients.

In addition, we want to clarify what data are available through the NDNH. The NDNH contains not only a national database of new hires, but also national wage data compiled by the State Unemployment Insurance agencies and Federal employment and wages. (This addresses commenters' concerns for information on out-of-State and Federal employment.) Matching adult TANF recipient data with quarterly wage data on the NDNH data base will provide the necessary work performance information to rank States on all the work measures.

With respect to the privacy concerns, the match of adult TANF recipients with the NDNH database will not reflect information about individuals, but will produce only aggregate information for use in calculating the State rankings on the work measures.

Prior to these regulations, we provided States flexibility in what data source(s) they could use for compiling performance data for the work

measures. We note that States competing for the FY 1999 bonus awards compiled their work measurement performance data based on their State unemployment wage data system. Our proposal builds on and strengthens that system. The use of the NDNH will ensure that we rank States based on the most uniform, objective, and reliable data available. In addition, States will have the benefit of the employment data on their TANF recipients, including out-of-State employment and Federal employment.

We specify in new paragraph (c) that we will issue program guidance on the data a State must submit if it wishes to compete on the Medicaid/SCHIP measure.

We specify in new paragraph (d) that if a State wishes to compete on the child care measure in FY 2002, it must report the data required by the CCDF program. These data are found in ACF Forms 800, 801, and 696. In addition, after external consultation, we will issue program guidance to specify the additional data on child care market rates that States must submit in order to compete in FY 2003.

Section 270.7 What Data Will We Use To Measure Performance on the Work Support and Other Measures?

In the NPRM, we proposed to use Census Bureau data to rank State performance on the Food Stamp and the Family Formation measures. We also proposed to rank State performance on the Medicaid/SCHIP measure based on the data submitted by States following their match of individuals no longer receiving TANF assistance with Medicaid/SCHIP enrollment data.

In the final rule, we specify in paragraph (c) that we will use data from the ACF Forms 800, 801, and 696 to rank State performance on the child care measure. Also, after external consultation, we will issue program guidance specifying the other information States must submit in order to compete on this measure.

In addition, we have made the following editorial and technical changes in this section: we have substituted the acronym SCHIP for the acronym CHIP and clarified that we will rank only those States that choose to compete on these measures. In addition, we received a number of comments on this section.

Comment: Several commenters expressed concern about the proposed use of Census Bureau data. Commenters based their concerns on perceived problems with the Current Population Survey (CPS) or the decennial census, *e.g.*, the CPS data could not produce reliable State-level estimates for all States, given the sample sizes. They cited the lack of reliability of the CPS data and recommended, alternatively, that we base Food Stamp and the Medicaid/SCHIP measures on State administrative data that are more current. They also believed that the decennial census data, despite periodic updates, under-reports many low-income populations, focuses on married households, and undercounts households where two adults may be responsible for parenting and child-rearing. Undercounting the increasing number of grandparents raising children was also of concern to commenters.

Response: We agree that State administrative data, in some cases, are more current than decennial census data or the CPS estimates. Our aim in the NPRM, however, was to propose to use the most uniform, reliable, and objective data available with as little burden to States as possible.

We want to clarify that we will use data from the Census Bureau's Census 2000 Supplementary Survey and the Census Long-Form Transitional Database in awarding bonuses for FY 2002 and FY 2003. The Supplementary Survey and the Transitional Database will provide reliable State-level data based on a sample of 700,000 cases. If high performance bonus awards are authorized in subsequent years, we plan to use data from the Census Bureau's American Community Survey (ACS), which will provide annual reliable State and county-level data, starting in 2004 for areas with populations of 65,000 or more.

Comment: A number of commenters recommended that the final rule require States to report data separately on the number of adults and the number of children no longer receiving TANF assistance who are enrolled in Medicaid or SCHIP. They commended our proposal to evaluate States on the percentage of individuals enrolled in Medicaid or SCHIP, rather than the percentage of families enrolled. They based their recommendation on the need for better data and findings from recent studies that indicated that often only selected family members retain health care coverage after leaving welfare. In particular, parents appear to be at much greater risk than children of losing out on health care coverage for which they are eligible.

Response: We agree that information on the participation of adults and children in these programs could be useful in monitoring program outcomes. However, we do not believe that the value of this information justifies the additional data collection effort that would be required.

Section 270.8 How Will We Allocate the Bonus Award?

This section of the NPRM proposed to:

- Make awards to the ten States with the highest scores in each measure;
- Allocate a total of $140 million to the four work measures as follows:
  - Job entry rate—$56 million
  - Success in the work force—$35 million
  - Increase in job entry rate—$28 million
  - Increase in success in the work force—$21 million
- Allocate a total of $60 million to the non-work measures with $20 million each to the Food Stamp, Medicaid/SCHIP, and family formations measures; and
- Within each measure, distribute the bonus money based on each State's percentage of the total amount of the SFAG of the ten States that will receive a bonus.

There were no major objections to this section of the NPRM, but several commenters made alternate recommendations. In general, most States and their representative organizations recommended that the full amount of the annual bonus ($200 million) be awarded based on the work measures. On the other hand, a large number of the other commenters recommended various increases in the amount of funding allocated to the work support measures.

In addition, although there was general support for awarding bonuses to the top ten States with the highest scores in each measure, we received several suggestions for alternative approaches to the Food Stamp and Medicaid/SCHIP measures: (1) Award bonuses in each measure for both absolute performance and performance improvement; (2) award five bonuses for absolute performance and five for improved performance; (3) alternatively, award three bonuses for absolute performance and seven for performance improvement; and (4) award the same amount of money for each measure.

Comment: Several commenters recommended specific changes in the amounts proposed for the four work measures that would emphasize ''success in the workplace.'' They believed that the proposed allocations seem unduly weighted towards job entry (*i.e.*, $56 million of the $140 million) at a time when the focus of the TANF program has shifted to an emphasis on earnings gain (measured by success in the work force and increased

success in the work force). They indicated that job entry is no longer the critical measure that job success is. One commenter, for example, suggested that we alter the bonus amounts as follows:

- Job entry—$28 million
- Success in work force—$56 million
- Increase in job entry—$21 million
- Increase in success in work force—$35 million

Response: We considered this recommendation in light of our knowledge of and experience with State TANF programs to date. At the present time, we believe it is important to retain a priority focus on job entry, not only because of the emphasis throughout the TANF statute on work and economic self-sufficiency, but also because initial employment is a prerequisite for the rest of the work measures. It also remains a primary focus for most State programs in leading to self-sufficiency. However, the bonuses also recognize that job entry is not sufficient for meeting the work-related objectives of TANF and that TANF goals encompass more than work.

Comment: Commenters were concerned that, in competing for the bonus, a State with a relatively small SFAG might be likely to lose money if the cost of competing for the bonus was greater than the amount the State might receive as a winner. They recommended that States should at least be able to recover the costs of applying for the bonus in a category where they made the top ten winners list. They also recommended that we award any State receiving a bonus some minimum amount based on an estimated cost of applying for the bonus in that category. We could allocate the remainder of the award money in that category as proposed.

Response: We are aware that, for a few States, it may be difficult to compile data in order to compete for the bonuses. In the final rule, we have addressed this difficulty, in part, by requiring no information from States for the Food Stamp and the family formation measures and minimal information from States for the work measures and matching these minimal data with the NDNH data at the Federal level. For the child care measure in FY 2002, we have relied on data States report to us under the CCDF program. With respect to the commenter's specific suggestions, we could find no support for specifying minimum bonuses in section 403(a)(4) of the Act and believe it could be very problematic to administer. Thus, we have not accepted these recommendations.

Comment: A number of commenters, including Members of Congress, recommended increases in the amounts allocated to each of the work support measures, ranging from increasing the allocation for the Food Stamp and Medicaid/SCHIP measures to $30, $35, or $40 million; allotting amounts ranging from $20 to $40 million for a new child care measure; and allotting $20 million for a new measure on domestic violence and $20 million each for two measures on worker protections. Commenters offered the following opinions:

- States already have many incentives to help individuals enter the work force, *e.g.*, the penalties if States do not meet the work participation requirements. Skewing performance bonuses further towards work is unnecessary. Giving equal weight to work and work support measures better reflects the reality that a job alone is not enough for a family to succeed.
- Families will not be able to get or maintain employment without these essential supports. Further, the work support measures (including the addition of any new measures related to child care or other measure) support two of the four purposes on TANF by providing assistance so that children can be cared for in their own homes as well as promoting job preparation and work.
- As proposed in the NPRM, the $20 million for each of the Food Stamp and Medicaid/SCHIP measures, divided among the top ten winning States, creates little incentive for States, compared to the more generously funded work measures.

Response: We seriously considered increasing the allocations for the Food Stamp measure and the Medicaid/SCHIP measure. However, we continue to believe that the work measures most directly address the overall focus of the TANF program, including purposes one, two, and four of the Act. Therefore, we continue our proposed allocation plan and will allot $140 million to the work measures, $20 million to the Food Stamp measures, and $20 million to the Medicaid/SCHIP measures. We also specify in new paragraph (c) that we will allot $10 million to the child care measure and $10 million to the family formation measure.

Comment: In commenting on one State's receipt of a multi-million dollar bonus in 1999 for 1.7 and 2.9 percent increases in two work measures, one organization objected to the lack of a benchmark or other threshold standard as a part of the bonus system. They believed such ''minuscule changes'' in State performance do not represent high performance. Rather than funding the ten States with the highest scores in each measure, they recommended that we set limits for what we consider acceptable and successful performance.

Response: In the preamble to the NPRM, we solicited public comment on some of the issues we had considered related to absolute performance, performance improvement, and threshold levels. (See Section IV. Discussion of Other Issues Related to Performance Measurement.) The issue of a threshold level, benchmark, or performance standard is one we struggled with, both internally and in our consultations with external groups. Given the lack of experience in establishing and implementing a bonus system, the general consensus on this matter was that an ordinal standard, such as rewarding the ten States with the highest scores, was initially most appropriate.

As we said in the NPRM, awarding bonuses to the top ten States not only provides a clear incentive to States, but also helps avoid problems associated with the need to re-allocate funds. More importantly, we did not want to set a numerical threshold based on an absolute level of performance, given the absence of baseline data. Another factor we considered is that what works now in terms of a bonus system may not be appropriate as the States' caseloads continue to change.

Finally, we believe that State programs are still evolving and continue to reflect the flexibility provided in the statute in their programs and services. Given that diversity, we have decided not to change our proposed standard.

Comment: This same commenter recommended that we invest most of the award funds in the work support measures on the grounds that the State Food Stamp and Medicaid/SCHIP enrollment data are the most solid, *i.e.*, they follow individuals over time, and they are backed by quality control efforts. They recommended that we delay awarding bonuses to measure job retention and earnings until we have a valid source of data for these categories.

Response: We believe the minimal data States must provide to compete for the work measures, cross-referenced to or matched with the NDNH data, will provide the basis for national uniform, objective, and reliable job retention and earnings information on which we can make bonus awards on these measures with full confidence. As proposed, we will use Census Bureau data as the data source for the Food Stamp and the family formation measures; we will use State Medicaid and SCHIP data (matched with TANF data at the State level) as the data source for the Medicaid/SCHIP measure.

Comment: Rather than basing the amount of the award on the percentage of TANF funds a State is allotted, one commenter recommended that, in distributing funds among the top ten winners in each measure, we base the bonus amount on the percentage improvement a State achieves.

Response: We continue to believe that the allocation of bonus funds based on a percentage of a State's family assistance grant in relation to the total bonus award for that measure is the most appropriate allocation method. This approach recognizes the potential number of individuals affected by the State's performance, the State resource costs to achieve levels of high performance, and the five-percent funding limitation in the statute.

Section 270.9 How Will We Redistribute Funds If That Becomes Necessary?

In the NPRM, we proposed a two-step process to redistribute funds, if for some reason we cannot award the full annual amount of $200 million in any fiscal year. We proposed that, if we could not distribute the funds as specified in § 270.8, due to the statutory limit on each State's bonus award, we would reallocate the funds among the measures proposed in § 270.4. If the funds still could not be distributed within the bonus year, we proposed that they would be available for distribution in the following year.

We have made one editorial change in the regulatory text for clarity. In § 270.9(a), we deleted the phrase ''due to the statutory limit on the amount of each State's bonus award,'' as there may be additional reasons why funds could not be awarded, *e.g.*, if insufficient numbers of States qualify for bonuses in a particular measure in a given year.

Comments: Two commenters concurred with the proposal that we re-allocate any undistributed funds among the top ten States. However, they also recommended that if we still cannot distribute funds within the bonus year, we should award the funds to the eleventh and twelfth State in rank order.

Response: We reconsidered these suggestions, which we had evaluated earlier, in the context of our external consultations. We find no compelling reason to accept the suggestion that funds be awarded to the eleventh or twelfth State or to change the process we proposed in the NPRM. As we indicated above, we believe ten awards in each measure offers a reasonable and clear incentive to States. We do not believe diluting this incentive would further the aims of the bonus system, particularly as we proposed another more efficient mechanism to ensure that funds that cannot be awarded in a fiscal year will remain available, *i.e.*, will be rolled into the next fiscal year's awards.

However, we will reconsider this suggestion if: (1) We find that, in FY 2003, the bonus awards have not been re-authorized in the statute, and we cannot roll funds forward; and (2) we have a situation in which funds would remain unawarded.

Section 270.10 How Will We Annually Review the Award Process?

In this section of the NPRM, we proposed to annually review the measures, data sources, and funding allocations for the high performance bonus system to determine if modifications, adjustments, or technical changes were needed. We stated explicitly that we would not add new measures or change funding allocations except through regulations.

Also in this section, we proposed that we would consult with NGA and APHSA and other interested parties before we made our final decisions on performance components for bonus awards in FY 2002, FY 2003 and beyond; notify States through program guidance of our decisions; and post this information on the Internet.

Comments: Most commenters were supportive of these proposed provisions but provided additional comments and recommendations.

(1) Regarding the proposed annual review of data sources, one commenter urged us to use the review process to evaluate annually whether new data sources are available. They supported a broader measure for determining State success in assuring health coverage for low-income families that would require additional data sources.

(2) Regarding the proposed consultation activities, a State ''welcomed the flexibility and input but only if changes produce little burden on States.''

(3) Other commenters urged us to include members of the advocacy community in the review process, *i.e.*, ''specify in the final rule that our consultation with interested parties will include, among others, local elected officials (such as mayors and county officials), labor unions, charitable organizations (such as those providing emergency food assistance and monitoring services to families with children), and low-income clients and their advocates.''

(4) One commenter recommended that we should release the findings of the annual review process.

Response: One of the purposes of the annual review is to identify and possibly implement certain changes, modifications, and technical corrections in the high performance bonus system, but not changes in the measures or funding allocations. We will change these latter items only through rulemaking.

We view the high performance bonus system, however, as one that is still new for both the States and the Federal government and one that will evolve and need refinements in the future. We agree with the first commenter and are committed to looking to identify new, more reliable data sources. We also agree that our external consultations, as they have done in the past, will include a broad range of ''interested parties.'' However, we have not added specific examples of such agencies and organizations in the regulatory text because we do not think it is necessary or appropriate. (We specified the National Governors' Association and the American Public Human Services Association in this section because they are specified in the statute.)

Finally, we have not accepted the suggestion to release the findings of the annual review. We believe such a release would be duplicative because the results will be shared through our consultation activities and/or through periodic guidance. If any changes result, the guidance containing these changes will explain the basis for the changes, including our rationale and the results of our review and consultation.

Comment: One commenter recommended that, as a part of the consultation process, we should post on the Internet the data submitted by States in competing for the bonus.

Response: We will make some of the data that are submitted by the States competing for the bonus available annually, after we have ranked the States and officially awarded the bonuses.

We will not make any social security numbers available.

Section 270.11 When Must the States Report the Adult Recipient Data and Other Information Related to the Work Measures? (Title of This Section in the NPRM)

Section 270.11 When Must the States Report the Data and Other Information in Order To Compete for Bonus Awards? (Title of This Section in the Final Rule)

In the NPRM, we proposed time frames for States to submit various information and data required to compete on the proposed work measures.

In the final rule, we have broadened the content of this section to include

information on when the data for the Medicaid/SCHIP measures and the child care measure must be reported to us. In paragraph (a), we specify that each State must submit a list of measures on which it wishes to compete by February 28 of each bonus year. This provision is unchanged from the NPRM. In paragraphs (b) and (d), we specify that the dates for submitting data for the work measures and the Medicaid/SCHIP measures will be specified in program guidance. In paragraph (c), we specify when States must submit SSP–MOE data. This provision is unchanged from the NPRM. In new paragraph (d), we specify that States competing on the child care measure must report the child care information by the date specified by us.

In the NPRM, we proposed that States must submit data for the work measures by February 28 and August 31 of each bonus year. These time frames reflected the proposed option for States to match adult recipient data with Unemployment Insurance data. We have dropped that option in the final rule. The final rule provides that we will match State adult recipient identifying information provided by competing States with wage data in the NDNH. We are working closely with the Office of Child Support Enforcement to finalize all technical issues related to this match, and we will specify the reporting timeframes in program guidance at a later date.

Comment: One commenter recommended that the final data be reported 13 months after the last quarter of the Federal fiscal year. The commenter did not discuss the reason for the suggested revision.

Response: If we adopted the time frame suggested by the commenter, we could not issue the awards during the bonus year. Therefore, we have not accepted this comment.

Section 270.12 Must States File the Data Electronically?

In this section, we proposed that, in order to compete for the high performance bonus, each State must submit data electronically on the work measures and on the Medicaid/SCHIP outcome measure in a manner that we and HCFA will specify.

Comment: One commenter said that, if States are to submit data electronically, we must develop procedures well in advance, with adequate testing at the State and Federal levels.

Response: We agree that we should develop and test the data submission procedures in time for use in the FY 2002 bonus year. We intend to have further discussions on these matters with Federal and State staff following publication of the final rules and prior to implementation.

Section 270.13 What Do States Need To Know About the Use of Bonus Funds?

In the NPRM, we specified some of the requirements for the use of bonus funds, *e.g.*, that funds must be used to carry out the purposes of the Act (section 401) and must meet the requirements of section 404 (Use of Funds) and 408 (Prohibitions; Requirements) of the Act.

Comments: The majority of commenters on this section urged us to provide as much flexibility as possible in the use of these funds, *e.g.*, to ''exempt these funds from the constraints of the regulations and administrative caps associated with the SFAG.'' One commenter urged us to follow the model of the Department of Agriculture's Food and Nutrition Service, which rewards States for payment accuracy by providing additional administrative funds without restrictions. Without this flexibility, the bonus award would not provide an incentive to achieve but would become ''just another quarterly advice of TANF funding availability.''

In emphasizing recommendations for flexibility, several commenters noted the lack of congruence between the proposed bonus awards tied to success in the Food Stamp and the Medicaid/SCHIP programs and a State TANF agency's inability to use TANF dollars to, for example, increase health care coverage for an additional portion of the low-income population, provide food stamp outreach, or directly fund food shelves. They recommended that we allow bonus dollars for expenditures that could positively affect the outcomes being measured, *i.e.*, an increase in health care coverage or Food Stamp use.

Other commenters suggested that, if flexibility were provided, States could use bonus funds for a wide range of activities, such as economic development targeted at TANF families; supplemental wages for newly employed TANF workers; allowable medical services; supplements for physician reimbursement rates for Medicaid to stimulate more access to health care; State programs or initiatives that reduce poverty, such as EITC credits; and increases in the number and quality of child care slots.

One commenter, aware of the statutory restrictions on these funds, urged us to seek a legislative amendment to provide greater flexibility.

Response: First, we want to reiterate that a State has the same flexibility in the use of these bonus funds as it has in the use of other TANF block grant funds.

Second, despite a commenter's assertion that the statute does not require these limitations on the bonus funding, sections 404 and 408 of the Act limit the purposes for which high performance bonus funds can be used. Both sections refer to the use of a grant ''under section 403.'' Since high performance bonus awards (as well as bonus awards to reduce out-of-wedlock births, contingency funds, and supplemental funds) are grants under section 403, the limitations in sections 404 and 408 are statutory. Likewise, the restriction on the use of TANF funds for Food Stamp outreach is statutory, based on the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105–185.

Comment: One commenter questioned whether 45 CFR 263.13(a)(i) applied the 15-percent administrative cap limitation to the State's SFAG or to all funds a State may receive under section 403 of the Act.

Response: Under 45 CFR 263.13(a)(i), the 15-percent cap applies to all funds a State receives under section 403 of the Act, except for Welfare-to-Work funds under section 403(a)(5). As explained in the preamble to the final TANF rule, this section provides for a consolidated administrative cap. Thus, it limits the total amount a State could spend on administrative costs based on the total amount of funding a State receives under section 403. We will not apply the 15-percent cap separately to each grant or award under section 403.

Comment: Other commenters asked that we clearly state that the high performance bonus funds, if not expended in the year of the award, would be available in future fiscal years until such time as they are spent.

Response: Under section 404 of the Act, there is no expenditure period for TANF funds awarded to States under section 403 of the Act. The ''carryover'' provision includes the bonus award funds. Therefore, bonus funds, once awarded to States, are available until such time as they are spent in accordance with TANF requirements (including the requirement that reserved funds must be spent on ''assistance'' or associated administrative costs under the TANF program).

In the NPRM, we also indicated that any expenditures for ''assistance'' are subject to the restrictions on the use of Federal funds at 45 CFR 263.11. We have revised the proposed regulatory language because we did not want it

misinterpreted. Regardless of the purpose to which the bonus funds are put, a State's expenditure of bonus funds is subject to the requirements in § 263.11. We had referred specifically to ''assistance'' in the NPRM because we wanted to alert States to the special restrictions applying to the use of reserved (*i.e.*, carryover) funds under section 404(e) of the Act. A State may spend reserved funds only on assistance and related administrative costs. (See 64 FR 17840 for further discussion.)

For clarity, we have added new paragraph (d) in this section to specify that States must report quarterly on the use of the bonus funds, along with other TANF funds, using the ACF–196.

VII. Amendment to 45 CFR Part 265

Comment: A few commenters objected to the requirement that States must submit Sections One and Three of the SSP-MOE reports in order to qualify for the high performance bonus. They also commented that a State should not be required to submit MOE data as a condition of competing for the food stamp and Medicaid/SCHIP awards since these measures do not use the SSP-MOE data.

Response: This first comment was similar to one we received on the NPRM for the general TANF rule. It reappeared because § 270.11(b) of the high performance bonus NPRM reiterated the requirement from the general TANF rule (at 45 CFR 265.3(d)) that States wishing to compete for a high performance bonus must submit data reports on their separate State programs (SSPs). The SSP-MOE reporting requirement in the general TANF rule covers all high performance bonus measures.

Last year, when we published the TANF final rule and the high performance bonus NPRM, we believed that submission of the SSP-MOE reports was critical to understanding State caseload changes and work performance. However, as TANF and SSPs have continued to evolve, and we have gained more experience with the caseload reduction credit and high performance bonus processes, we have encountered situations where a waiver of the SSP-MOE reporting requirement seemed appropriate. Most notably, as discussed in more detail later, States have raised questions about a very few SSPs that do not address basic needs; do not appear to be particularly germane to assessing State caseload reductions, work efforts, or performance; and are not amenable to TANF-like reporting. Our general TANF rules do not allow us any discretion to grant waivers of the SSP-MOE reporting requirements, even in such circumstances. Based on discussions with States, we are concerned that, in some of these cases where the SSP-MOE reporting requirements are particularly problematic, States might elect not to provide certain benefits that support the goals of TANF rather than to develop the data collection and reporting system that the SSP-MOE requirements would entail.

Since these problematic situations can arise with respect to either the high performance bonus or the caseload reduction credit, we wanted to provide an opportunity for waiver of the requirements in both circumstances. We believe the clearest way to make that change is in the general TANF rule. Thus, in this rulemaking, we have revised the TANF final rules at § 265.3(d)(2) to allow waivers of the SSP-MOE reporting requirements, under very limited circumstances. More specifically, we would allow waivers only if the benefits being provided in the SSPs were considered assistance under § 260.31(a)(3) and the State made a clear case that the cost and burden associated with collection and reporting of the data substantially outweighed any potential benefit.

The first condition means that waivers would be available only for benefits that are defined as ''assistance'' because they are ''supportive services such as transportation and child care provided to families that are not employed.'' We would not waive SSP-MOE reporting requirements for SSPs that provide assistance under paragraphs (a)(1) or (a)(2)—that is, for programs that: (1) provide assistance that meets the basic needs of a family (even if the family's receipt of such benefits is conditioned upon participation in work experience or community service); or (2) provide benefits that would have historically been considered ''welfare'' benefits. For example, we would never waive SSP-MOE reporting when the State had elected to meet the basic needs of its two-parent TANF cases through a SSP. We would only grant waivers for SSPs that provide supportive services, such as transportation and child care, to families that are unemployed. In fact, we anticipate that SSPs receiving reporting waivers would typically be serving a mix of employed and unemployed families, but mostly employed families. However, separating the families into employed and unemployed families and gathering detailed characteristics data on a monthly basis for only the employed families would be extremely burdensome.

In deciding whether a State had made its case, we would look at factors such as:

- The capacity of the SSP to provide the kind of information required in the SSP-MOE report;
- The size of the separate State program (*e.g.*, the number of beneficiaries and the proportion of the TANF caseload that would represent); and
- Whether the data would be important to a full understanding of the State's work efforts, caseload changes, or performance.

An example of a situation where we might waive SSP-MOE reporting would be the following: a State provides funds to a local transportation initiative that provides shuttle bus service between a low-income, inner-city neighborhood and suburban jobs. While most of the shuttle passengers are employed, unemployed neighborhood residents can use the shuttle to get to a pre-employment training program. Thus, there may be families receiving benefits that meet the definition of ''assistance'' under § 260.31(a)(3). The State agency, working with the transportation program, can determine the proportion of ''eligible families'' using this service through a simple survey. However, the program does not collect detailed case-specific and monthly information on the families they serve, and it has no mechanism for collecting such data or submitting data electronically to the State. In addition, the number of families receiving ''assistance'' in the program is thought to be negligible, and they would have little chance of showing up in, or affecting, the SSP sample.

VIII. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. This rulemaking implements statutory authority based on broad consultation and coordination. Section 403(a)(4) of the Act requires the Department to consult with the National Governors' Association and the American Public Human Services Association in the development of a system for awarding high performance bonuses. As described earlier in the preamble and in section G. of this

Regulatory Impact Analysis, ACF consulted with States, their representative organizations, and a broad range of advocacy groups, researchers, and others to obtain their views. This rule reflects the discussions with and the concerns of the groups with whom we consulted.

This rule is a significant regulatory action that will have an annual effect on the economy of $100 million or more, according to section 3(F)(1) of the Executive Order. It will determine how $200 million will be awarded annually to high performing States to be used to carry out the purposes of the TANF program. It will also have the additional effect of improving State efforts to implement welfare reform. High performing States could see their funding increase by as much as five percent of their State family assistance grant. We believe the cost of competing for a high performance bonus award in FY 2002 should be minimal since competition for these awards will be based, to the extent possible, on existing data sources. After consultation with States, advocates, and others, we will specify the data States must submit in order to compete on the child care measure in FY 2003.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States, the District of Columbia, and certain territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Appropriations Act of 1999. The high performance bonus awards are a statutory part of the TANF program and are designed to reward State efforts in strengthening the economic and social stability of families and carrying out other purposes in the statute. The final rule does not limit State flexibility to design programs to serve these purposes.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the PRA, we have submitted the data collection requirements to OMB for review and approval. We used the NPRM as a vehicle for seeking comment from the public on these and any additional information collection activities that they believe should be added as a part of the bonus award process.

Based on this final rule, we will award bonuses, in FY 2002 and beyond, on four work measures, five work support measures, and one measure on family formation and stability in § 270.4. We have computed the burden based only on the work measures and the measure of Medicaid/SCHIP participation. No reporting burden would fall on the States in competing on the Food Stamp measure or the family formation measure as we will use the Census Bureau's Census 2000 Supplementary Survey and the Transitional Long-Form Database as the data source for this measure. In FY 2002, no additional reporting burden will fall on the States in competing on the child care measure as States will be ranked based on data they currently report under the Child Care and Development Fund program (ACF Forms 800, 801, and 696). After external consultation on the child care measure, we will specify, by the end of the calendar year, the additional information States must submit in order to compete on this measure in FY 2003 and submit any additional paperwork burden requirements to OMB for approval. These requirements would not become effective until approved by OMB.

Burden Estimate for the Work Measures

In § 270.6 of the NPRM, we proposed the use of two alternative sets of data. In the first alternative, States would collect quarterly and report semi-annually a minimal set of identifying information on adult TANF recipients that we would match against the information in the National Directory of New Hires (NDNH) to determine the State's scores for the work measures. In the second alternative, the State would submit more detailed work performance data based on its matching of adult recipient data with its UI data. Commenters strongly supported the first alternative and the use of the NDNH whenever possible.

In the final rule, we specify that we will use the first reporting alternative. We estimate the reporting burden for the first reporting alternative in § 270.6(a) to be 1,728 hours, based on the requirement that States report some or all of the following three data elements: the name, birth date, and social security number of all adult TANF and SSP-MOE recipients. (The specific data elements will be issued in program guidance.) Our estimate of the burden is as follows: 16 hours per response, times 54 respondents, times two (semi-annual reporting), for a total annual burden of 1,728 hours.

In addition, if a State wishes to receive a high performance bonus, it must report the data in Sections One and Three of the SSP-MOE Data Report as required in § 265.3(d) of this chapter. The burden for this reporting requirement was previously estimated in the TANF final rule, published April 12, 1999 (64 FR 17720).) We have not revised our estimates, but we note that this burden may be reduced in view of the amendment to § 265.3(d) included in this rulemaking which waives SSP–MOE reporting requirements under certain circumstances.

We believe the burden of reporting the identifying information on work measures will be minimal for most States, particularly as we will be using the NDNH as a match at the Federal level. In addition, States already have experience in extracting case/individual identifying information from their electronic data bases for matching purposes, including the Income and Eligibility Verification System (IEVS) matches required by statute.

Burden Estimate for the Measures on Medicaid/SCHIP Participation

The Medicaid/SCHIP performance measures at § 270.4(d) are based on semi-annual reporting of the data from a match of TANF data and Medicaid/SCHIP enrollment data, using information from HCFA's MSIS system and the HCFA Form 21–E. Because this activity is similar to State activity in matching TANF data and UI data, as is currently done for the ACF–200 (OMB No. 0970–0180), we estimate that the burden will be approximately the same, *i.e.*, 4,320 hours, excluding start-up costs. We understand that some States may not have social security numbers for SCHIP recipients. In that instance, there may be an additional burden.

The total annual burden estimate includes the development of a one-time extraction program (based on our specifications), computer run-time to execute the program, the creation of an extract data file, and transmitting the information.

We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be potential respondents. (Currently, American Samoa has not applied to implement the TANF program.)

The annual burden estimate for this data collection is:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Work Measures	54	2	16	1,728
Medicaid/SCHIP Measures	54	2	40	4,320
Estimated Total Annual Burden Hours				6,048

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Competition for a high performance bonus is entirely at State option. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted State or small government.

F. Congressional Review

This final rule is a major rule as defined in 5 U.S.C., Chapter 8.

G. Executive Order 13132

On August 4, 1999, the President issued Executive Order 13132, ''federalism.'' The purposes of the Order are: ''to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act * * * *''

We certify that this final rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The final rule does not pre-empt State law and does not impose unfunded mandates.

This rule does not contain regulatory policies with federalism implications that would require specific consultations with State or local elected officials. The statute, however, requires consultations with the National Governors' Association and the American Public Human Services Association in the development of a high performance bonus system.

During the development of the NPRM, we held two types of consultations. First, we raised issues related to this provision in the general TANF consultation meetings with a broad range of representatives of State and local governments; nonprofit, advocacy, and community organizations; foundations; and others. Second, we consulted intensively with representatives of the National Governors' Association, the American Public Human Services Association, the National Conference of State Legislatures, and approximately 30 State representatives who participated by regularly scheduled conference calls over a period of approximately nine months.

List of Subjects in 45 CFR Parts 265 and 270

Grant programs—social programs; Public assistance programs; Reporting and Recordkeeping Requirements; Poverty.

(Catalogue of Federal Domestic Assistance Programs: No. 93.558 Temporary Assistance for Needy Families (TANF) Program; State Family Assistance Grants; Tribal Family Assistance Grants; Assistance Grants to Territories; Matching Grants to Territories; Supplemental Grants for Population Increases; Contingency Fund; High Performance Bonus; Decrease in Illegitimacy Bonus)

Dated: August 15, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: August 16, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR Chapter II as follows:

PART 265—DATA COLLECTION AND REPORTING REQUIREMENTS

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

2. We are amending § 265.3 by redesignating paragraph (d)(2) as paragraph (d)(2)(i) and adding a new paragraph (d)(2)(ii) to read as follows:

§ 265.3 What reports must the State file on a quarterly basis?

* * * * *

(d) * * *

(2) * * *

(ii) We may grant waivers of this reporting requirement under certain limited circumstances.

(A) We will only grant waivers for separate State programs that provide benefits that meet the definition of assistance under § 260.31(a)(3) of this chapter; and

(B) The State must demonstrate to our satisfaction that the cost and burden associated with collection and reporting of the data would substantially outweigh any potential benefit.

PART 270—HIGH PERFORMANCE BONUS AWARDS

3. We are adding a new part 270 to read as follows:

Sec.
270.1 What does this part cover?
270.2 What definitions apply to this part?

270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?
270.4 On what measures will we base the bonus awards?
270.5 What factors will we use to determine a State's score on the work measures?
270.6 What data and other information must a State report to us?
270.7 What data will we use to measure performance on the work support and other measures?
270.8 How will we allocate the bonus award funds?
270.9 How will we redistribute funds if that becomes necessary?
270.10 How will we annually review the award process?
270.11 When must the States report the data and other information in order to compete for bonus awards?
270.12 Must States file the data electronically?
270.13 What do States need to know about the use of bonus funds?

Authority: 42 U.S.C. 603(a)(4).

§ 270.1 What does this part cover?

This part covers the regulatory provisions relating to the bonus to reward high performing States in the TANF program, as authorized in section 403(a)(4) of the Social Security Act.

§ 270.2 What definitions apply to this part?

The following definitions apply under this part:

Absolute rate means the actual rate of performance achieved in the performance year or the comparison year.

Act means the Social Security Act, as amended.

Bonus year means each of the fiscal years 2002 and 2003 in which TANF bonus funds are awarded, as well as any subsequent fiscal year for which Congress authorizes and appropriates bonus funds.

CCDF means the Child Care and Development Fund.

Comparison year means the fiscal or calendar year preceding the performance year.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

Food Stamp Program means the program administered by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, U.S.C. 2011 *et seq.*

HCFA is the Health Care Financing Administration.

Improvement rate means the positive percentage point change between the absolute rate of performance in the performance year and the comparison year, except for the calculation and ranking of States on the increase in success in the work force measure in § 270.5(a)(4).

Medicaid is a State program of medical assistance operated in accordance with a State plan under title XIX of the Act.

MSIS is the Medicaid Statistical Information System.

Performance year means the year in which a State's performance is measured, i.e., the fiscal year or the calendar year immediately preceding the bonus year.

SCHIP is the State Children's Health Insurance Program as described in title XXI of the Act.

Separate State Program (SSP) means a program operated outside of TANF in which the expenditure of State funds may count for TANF maintenance-of-effort (MOE) purposes.

SSP–MOE Data Report is the report containing disaggregated and aggregated data required to be filed on SSP–MOE recipients in separate State programs as specified in § 265.3(d) of this chapter.

State means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

TANF means The Temporary Assistance for Needy Families Program.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

§ 270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?

(a) Except as provided in § 270.9, we will award $200 million in bonus funds annually, subject to Congressional authorization and the availability of the appropriation.

(b) The amount payable to a State in a bonus year may not exceed five percent of a State's family assistance grant.

§ 270.4 On what measures will we base the bonus awards?

(a) *Performance measures: general.*

In FY 2002 and beyond, we will base the high performance bonus awards on: four work measures; five measures that support work and self-sufficiency related to participation by low-income working families in the Food Stamp Program, participation of former TANF recipients in the Medicaid and SCHIP programs, and receipt of child care; and one measure on family formation and stability.

(b) *Work measures.*

(1) Beginning in FY 2002, we will measure State performance on the following work measures:

(i) Job entry rate;

(ii) Success in the work force rate;

(iii) Increase in the job entry rate; and

(iv) Increase in success in the work force rate.

(2) For any given year, we will score and rank competing States and award bonuses to the ten States with the highest scores in each work measure.

(c) *Measures of participation by low-income working households in the Food Stamp Program.*

(1) *Food Stamp absolute measure.*

(i) Beginning in FY 2002, we will measure the number of low-income working households with children (*i.e.*, households with children under age 18 which have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year minimum wage) receiving Food Stamps as a percentage of the number of low-income working households with children (as defined in this paragraph) in the State.

(ii) We will rank all States that choose to compete on this measure and will award bonuses to the three States with the highest scores. We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for the measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(2) *Food Stamp improvement measure.*

(i) Beginning in FY 2002, we will measure the improvement in the number of low-income working households with children (*i.e.*, households with children under age 18 which have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year Federal minimum wage) receiving Food Stamps as a percentage of the number of low-income working households with children (as defined in this subparagraph) in the State.

(ii) For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of calendar (CY) 2000 to CY 2001, based on Census Bureau decennial and annual demographic program data.

(iii) We will rank all States that choose to compete on this measure and will award bonuses to the seven States with the greatest percentage point improvement in this measure. We will

calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(d) Measures of participation by low-income families in the Medicaid/SCHIP Programs.

(1) *Medicaid/SCHIP absolute measure.*

(i) Beginning in FY 2002, we will measure the number of individuals receiving TANF benefits who are also enrolled in Medicaid or SCHIP, who leave TANF in a calendar year and are enrolled in Medicaid or SCHIP in the fourth month after leaving TANF assistance, and who are not receiving TANF assistance in the fourth month as a percentage of individuals who left TANF in the fiscal year and are not receiving TANF assistance in the fourth month after leaving.

(ii) We will rank the performance of each State that chooses to compete on this absolute measure and award bonuses to the three States with the highest scores.

(iii) We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(2) *Medicaid/SCHIP improvement measure.*

(i) Beginning in FY 2002, we will measure the improvement in the number of individuals receiving TANF benefits who are also enrolled in Medicaid or SCHIP, who leave TANF in a fiscal year and are enrolled in Medicaid or SCHIP in the fourth month after leaving TANF assistance, and who are not receiving TANF assistance in the fourth month as a percentage of individuals who left TANF in the fiscal year and are not receiving TANF assistance in the fourth month after leaving.

(ii) For any given year, we will compare a State's performance on this improvement measure to its performance in the previous year, beginning with a comparison of FY 2000 to FY 2001, based on a quarterly submission by the State as determined by matching individuals (adults and children) who have left TANF assistance and who are not receiving it in the fourth month with Medicaid or SCHIP enrollment data.

(iii) We will rank the performance of all States that choose to compete on this improvement measure and will award bonuses to the seven States with the greatest percentage point improvement in this measure.

(iv) We will calculate the percentage rate for the measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(e) *Child care subsidy measure.*

(1) Beginning in FY 2002, we will measure State performance based upon a composite ranking of:

(i) The percentage of children in the State who meet the maximum allowable Federal eligibility requirements for the Child Care and Development Fund (CCDF) who are served by the State during the performance year, including any such eligible children served with additional funds reported on the ACF–696 financial reporting form for the same fiscal year; and

(ii) The affordability of CCDF services based on a comparison of the reported assessed family co-payment to reported family income.

(2) Beginning in FY 2003, we will measure State performance based upon a composite ranking of:

(i) The two measures described in § 270.4(e)(1); and

(ii) A measure that compares reimbursement rates during the performance year to the market rates, determined in accordance with 45 CFR 98.43(b)(2), applicable to that year.

(3) For any given year, we will rank the States that choose to compete on the child care measure on each component of the overall measure and award bonuses to the ten States with the highest composite rankings.

(4) We will calculate each component score for this measure to two decimal points. If two or more States have the same score for a component, we will calculate the scores for these States to as many decimal points as necessary to eliminate the tie.

(5)(i) The rank of the measure for the FY 2002 bonus year will be a composite weighted score of the two components at 270.4(e)(1), with the measure at § 270.4(e)(1)(i) having a weight of 6 and the component at § 270.4(e)(1)(ii) having a weight of 4.

(ii) The rank of the measure for the bonus beginning in FY 2003 will be a composite weighted score of the three components at § 270.4(e)(2), with the component at § 270.4(e)(1)(i) having a weight of 5, the component at § 270.4(e)(1)(ii) having a weight of 3, and the component at § 270.4(e)(2)(ii) having a weight of 2.

(6) We will award bonuses only to the top ten qualifying States that have fully obligated their CCDF Matching Funds for the fiscal year corresponding to the performance year and fully expended their CCDF Matching Funds for the fiscal year preceding the performance year.

(f) *Family formation and stability measure.*

(1) Beginning in FY 2002 and beyond, we will measure the increase in the percent of children in each State who reside in married couple families, beginning with a comparison of CY 2000 and CY 2001 data from the Census Bureau. For any given subsequent year we will compare a State's performance on this measure to its performance in the previous year.

(2) We will rank the performance of those States that choose to compete on this measure and will award bonuses to the ten States with the greatest percentage point improvement in this measure.

(3) We will calculate the percentage rate for the measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(g) *Option to compete.*

Each State has the option to compete on one, any number of, or none of the measures specified in this section.

§ 270.5 What factors will we use to determine a State's score on the work measures?

(a) *Definitions.*

The work measures are defined as follows:

(1) The *Job Entry* Rate means the unduplicated number of adult recipients who entered employment for the first time in the performance year (job entries) as a percentage of the total unduplicated number of adult recipients unemployed at some point in the performance year.

(2) The *Success in the Work Force Rate* is composed of two equally weighted sub-measures defined as follows:

(i) The *Job Retention Rate* means the performance year sum of the unduplicated number of employed adult recipients in each quarter one through four who were also employed in the first and second subsequent quarters, as a percentage of the sum of the unduplicated number of employed adult recipients in each quarter. (At some point, the adult might become a former recipient.); and

(ii) The *Earnings Gain Rate* means the performance year sum of the gain in earnings between the initial and second subsequent quarter in each of quarters one through four for adult recipients

employed in both these quarters as a percentage of the sum of their initial earnings in each of quarters one through four. (At some point, the adult might become a former recipient.)

(3) The *Increase in the Job Entry Rate* means the positive percentage point difference between the job entry rate for the performance year and the job entry rate for the comparison year; and

(4) The Increase in Success in the Work Force Rate means the positive percentage point difference on at least one sub-measure between the success in the work force rate for the performance year and the success in the work force rate for the comparison year. It is composed of two equally weighted sub-measures defined as follows:

(i) The *Increase in the Job Retention Rate* means the percentage point difference between the job retention rate for the performance year and the job retention rate for the comparison year; and

(ii) The *Increase in the Earning Gain Rate* means the percentage point difference between the earnings gain rate for the performance year and the earnings gain rate for the comparison year.

(b) *Ranking of States.*

(1) We will measure State performance in the work measures over the course of an entire fiscal year both for the performance year and the comparison year, if applicable.

(2) We will rank the competing States on the work measures for which they:

(i) Indicate they wish to compete; and

(ii) Submit the data specified in § 270.6 within the time frames specified in § 270.11.

(3) We will rank the States on absolute performance in each of the work measures in paragraphs (a)(1) and (a)(2) of this section. For each of the work measures in paragraphs (a)(3) and (a)(4) of this section, we will rank States based on the percentage point change in their improvement rate in the performance year compared to the comparison year. The rank of the performance in paragraphs (a)(2) and (a)(4) of this section will be a composite score of the rank of the job retention and the earnings gain measures.

(4) We will calculate the percentage rate for each work measure to two decimal points. If two or more States have the same absolute or improvement rate for a specific work measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

§ 270.6 What data and other information must a State report to us?

(a) *Data for work measures.*

(1) If a State wishes to compete on any of the work measures specified in § 270.5(a), it must collect quarterly and report semi-annually for the performance year and, if the State chooses to compete on an improvement measure, the comparison year, the identifying information on all adult TANF recipients as specified in program guidance.

(2) Each State must submit the information in this paragraph for both adult TANF recipients and adult SSP-MOE recipients for whom the State would report the data described in paragraph (b) of this section.

(b) *Data on SSP-MOE programs.*

In order to compete on any high performance bonus measure, each State must submit the information in Sections One and Three of the SSP-MOE Data Report as specified in § 265.3(d) of this chapter.

(c) *Data for the Medicaid/SCHIP measures.*

If a State wishes to compete on the Medicaid/SCHIP measures in § 270.4(d), it must submit the information that we and HCFA will specify.

(d) *Data for the child care measure.*

If a State wishes to compete on the child care measure in § 270.4(e), it must report the data as required by the CCDF program and additional data on child care market rates that we will specify.

(e) *Intent to compete.*

Each State must notify us on which of the measures it will compete in each bonus year.

§ 270.7 What data will we use to measure performance on the work support and other measures?

(a) We will use Census Bureau data to rank States on their performance on the Food Stamp measures in § 270.4(c) and on the measure of family formation and stability in § 270.4(f). We will also use Census Bureau data, along with other information, to rank States on the child care measure in § 270.4(e). We will rank only those States that choose to compete on these measures.

(b) We will rank State performance on the Medicaid/SCHIP measures in § 270.4(d) based on data submitted by those States that choose to compete on these measures, as determined by matching TANF individuals who were enrolled in Medicaid/SCHIP and are no longer receiving TANF assistance with Medicaid/SCHIP enrollment data.

(c) We will rank State performance on the child care measure based on data submitted by those States that choose to compete on this measure. We will use data reported on Forms ACF 800, ACF 801, ACF 696 and other necessary data we will specify.

§ 270.8 How will we allocate the bonus award funds?

(a) In FY 2002 and beyond, we will allocate and award $140 million to the ten States with the highest scores for each work measure as follows, subject to reallocation as specified in § 270.9:

(1) Job Entry Rate—$56 million

(2) Success in the Work Force—$35 million

(3) Increase in Job Entry Rate—$28 million

(4) Increase in Success in the Work Force—$21 million;

(b) In FY 2002 and beyond, we will allocate and award $20 million to the ten States with the highest scores on the Food Stamp measures and $20 million to the ten States with the highest scores on the Medicaid/SCHIP measures, subject to reallocation as specified in § 270.9. For these measures, we will:

(1) Award $6 million to the three States with the highest scores on the Food Stamp absolute measure;

(2) Award $6 million to the three States with the highest scores on the Medicaid/SCHIP absolute measure;

(3) Award $14 million to the seven States with the highest scores on the Food Stamp improvement measure; and

(4) Award $14 million to the seven States with the highest scores on the Medicaid/SCHIP improvement measure.

(c) In FY 2002 and beyond, we will allocate and award $10 million to the ten States with the highest scores on the child care subsidy measure and $10 million to the ten States with the highest scores on the family formation and stability improvement measure.

(d) We will distribute the bonus dollars for each measure based on each State's percentage of the total amount of the State family assistance grants of the States that will receive a bonus.

§ 270.9 How will we redistribute funds if that becomes necessary?

(a) If we cannot distribute the funds as specified in § 270.8, we will reallocate any undistributed funds among the measures listed in § 270.4.

(b) If we still cannot distribute funds within the bonus year, they will remain available for distribution in the next bonus year, to the extent authorized by law.

§ 270.10 How will we annually review the award process?

(a) *Annual determination.*

Annually, as needed, we will review the measures, data sources, and funding allocations specified in this part to determine if modifications, adjustments, or technical changes are necessary. We will add new measures or make changes in the funding allocations for the

various measures only through regulations.

(b) *Criteria.*

We will determine if any modifications, adjustments, or technical changes need to be made based on:

(1) Our experience in awarding high performance bonuses in previous years; and

(2) The availability of national, State-reliable, and objective data.

(c) *Consultation.*

We will consult with the National Governors' Association, the American Public Human Services Association, and other interested parties before we make our final decisions on any modification, adjustment, or technical changes for the bonus awards. We will notify States and other interested parties of our decisions through annual program guidance. We will also post this information on the Internet.

§ 270.11 When must the States report the data and other information in order to compete for bonus awards?

(a) *All measures.*

Each State must submit a list of the measures on which it is competing by February 28 of each bonus year.

(b) *Work measures.*

Each State must collect quarterly and submit semi-annually during the bonus year the data specified in § 270.6(a) as follows:

(1) The data for the first and second quarters of the performance year and, if a State chooses to compete on an improvement measure, the first and second quarters of the comparison year, must be submitted by the dates we will specify in program guidance.

(2) The data for the third and fourth quarters of the performance year and, if a State chooses to compete on an improvement measure, the third and fourth quarters of the comparison year, must be submitted by the dates we will specify in program guidance.

(c) *SSP-MOE reporting.*

Each State must collect quarterly its SSP-MOE Data Report as specified in § 270.6(b) and submit it:

(1) At the same time as it submits its quarterly TANF Data Report; or

(2) At the time it seeks to be considered for a high performance bonus as long as it submits the required data for the full period for which this determination will be made.

(d) *Medicaid/SCHIP measures.*

Each State must submit the data required to compete on the Medicaid/SCHIP measures by the dates and in a manner that we and HCFA will specify.

(e) *Child care subsidy measure.*

Each State must submit the data required to compete on the child care measure by the date(s) we will specify.

§ 270.12 Must States file the data electronically?

Each State must submit the data required to compete for the high performance bonus work measures and the Medicaid/SCHIP measures electronically in a manner that we and HCFA will specify.

§ 270.13 What do States need to know about the use of bonus funds?

(a) A State must use bonus award funds to carry out the purposes of the TANF block grant as specified in section 401 (Purpose) and section 404 (Use of Grants) of the Act.

(b) As applicable, these funds are subject to the requirements in and limitations of sections 404 and 408 of the Act and § 263.11 of this chapter.

(c) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

(d) States must report quarterly on the use of the bonus funds.

[FR Doc. 00–21770 Filed 8–29–00; 8:45 am]

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Federal Register

Wednesday,
August 30, 2000

Part III

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Final Common Rule

Nuclear Regulatory Commission
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Tennessee Valley Authority
Department of State
Agency for International Development
Department of Housing and Urban Development
Department of Justice
Department of the Treasury
Department of Defense
National Archives and Records Administration
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
National Science Foundation
Corporation for National and Community Service
Department of Transportation

NUCLEAR REGULATORY COMMISSION

10 CFR Part 5

SMALL BUSINESS ADMINISTRATION

13 CFR Part 113

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1253

DEPARTMENT OF COMMERCE

15 CFR Part 8a

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1317

DEPARTMENT OF STATE

22 CFR Part 146

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 229

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3

DEPARTMENT OF JUSTICE

28 CFR Part 54

DEPARTMENT OF LABOR

29 CFR Part 36

DEPARTMENT OF THE TREASURY

31 CFR Part 28

DEPARTMENT OF DEFENSE

32 CFR Part 196

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1211

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 23

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 5

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–4

DEPARTMENT OF THE INTERIOR

43 CFR Part 41

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 19

NATIONAL SCIENCE FOUNDATION

45 CFR Part 618

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2555

DEPARTMENT OF TRANSPORTATION

49 CFR Part 25

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCIES: Nuclear Regulatory Commission; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Tennessee Valley Authority; Department of State; Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Labor; Department of the Treasury; Department of Defense; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency; National Science Foundation; Corporation for National and Community Service; Department of Transportation.

ACTION: Final common rule.

SUMMARY: This final common rule provides for the enforcement of Title IX of the Education Amendments of 1972, as amended (''Title IX''), by the agencies identified above. Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in education programs or activities. The promulgation of these Title IX regulations will provide guidance to recipients of Federal financial assistance who administer education programs or activities. The provisions of this common rule will also promote consistent and adequate enforcement of Title IX by the agencies identified above.

EFFECTIVE DATE: September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 65960, Washington, D.C. 20035–6560. Telephone: (202) 307–2222 (voice), (202) 307–2687 (TTY). Facsimile: (202) 307–0595.

Copies of this common rule are available, upon request, in large print and electronic file on computer disk. Other formats will be considered upon request.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this common rule is to provide for the enforcement of Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681, *et seq.*) (''Title IX''), as it applies to educational programs or activities operated by recipients of Federal financial assistance from the participating agencies. These Title IX regulations are presented as a common rule because the standards established for the enforcement of Title IX are the same for all of the participating agencies. The procedures for how an agency will enforce Title IX, including the conduct of investigations and compliance reviews, also follow the same structure. All of the participating agencies except the Department of the Treasury (''Treasury'') and the National Archives and Records Administration (''NARA'') reference their respective procedures under Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, *et seq.*), because Title IX is modeled after Title VI and the statutes have the same statutory enforcement mechanisms. Although Treasury and NARA do not have Title VI regulations, both entities are establishing enforcement procedures, as set forth below, that are akin to other agencies' Title VI procedures for enforcement. The final rule adopted by each agency is codified in that agency's portion of the Code of Federal Regulations as indicated in this final common rule.

II. Rulemaking History

On October 29, 1999, the participating agencies published a Notice of Proposed Rulemaking to implement Title IX. See 64 FR 58567 (1999).[1] The 60-day notice and comment period during which comments were submitted to the Department of Justice (DOJ) ended on December 28, 1999. DOJ received a total of 22 comments, five of which were submitted by other Federal agencies. DOJ and the participating agencies have carefully reviewed these comments and made various revisions to the common rule as discussed below.[2]

[1] In 1979 and 1980, two of the participating agencies published notices of proposed rulemaking for Title IX, but the proposed rules were never issued as final rules. On April 25, 1979, the Veterans' Administration published a notice of proposed rulemaking. See 44 FR 24320 (1979). On June 17, 1980, the Department of Justice published a notice of proposed rulemaking. See 45 FR 41001 (1980). By participating in the October 29,1999 Notice of Proposed Rulemaking, these agencies initiated new rulemaking proceedings.

[2] Three agencies that participated in the Notice of Proposed Rulemaking, the National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH), and the Institute of Museum and Library Services (IMLS) have decided to promulgate separate Title IX regulations rather than participate in the final common rule. These agencies are working to develop Title IX regulations that will closely parallel the common rule but may include minimal changes to reflect their specific agency missions. These agencies are currently in the

III. Overview of the Common Rule

As set forth in this common rule, the substantive nondiscrimination obligations of recipients, for the most part, are identical to those established by the Department of Education (''ED'') under Title IX. See 34 CFR Part 106. ED's regulations are the model for these Title IX regulations for several reasons: the history of public participation in the development and congressional approval of ED's regulations, ED's leadership role in Title IX enforcement, judicial interpretations of ED's regulations, recipients' familiarity with the regulations, and an interest in maintaining consistency of interpretation of regulations enforcing Title IX. ED's regulations, initially issued by the former Department of Health, Education, and Welfare (''HEW'') (and adopted by ED upon its establishment in 1980), are the result of an extensive public comment process and congressional review. HEW received and considered more than 9700 comments before drafting its final regulations. 40 FR 24128 (1975). Further, after the final regulations were issued, but before they became effective, Congress held six days of hearings to determine whether the regulations were consistent with the statute. Sex Discrimination Regulations: Hearings before the Subcomm. on Postsecondary Education of the House Comm. on Education and Labor, 94th Cong., 1st Sess. (1975).

In addition, under Executive Order 12250, the Department of Justice is responsible for the ''consistent and effective implementation'' of several civil rights laws, including Title IX. Using ED's regulations as the basis for this common rule promotes consistency and efficiency not only for agencies but for the recipient community. ED is the lead agency for enforcement of Title IX through its guidance, interpretations, technical assistance, investigative expertise, and resources committed. As the vast majority of recipients of Federal assistance from the identified agencies also receive assistance from ED, recipients should be subject to a single set of obligations with respect to Title IX.

Further, both Congress and the courts have interpreted Title IX based on ED's regulations. For example, in 1974, Congress amended the statute after holding hearings on provisions in ED's proposed rule. *See* 20 U.S.C. 1681(a)(6). In 1982, the Supreme Court upheld that portion of ED's regulations that prohibits discrimination by a recipient on the basis of sex in its employment practices. *See North Haven Bd. of Educ.* v. *Bell,* 456 U.S. 512 (1982). Congress also passed the Civil Rights Restoration Act of 1987 (''CRRA''), in large part, to overrule the Supreme Court's decision in *Grove City College* v. *Bell,* 465 U.S. 555 (1984), and thus to codify Title IX consistent with ED's pre-*Grove City* interpretation of the statute. *See* S. Rep. No. 100–64, at 2 (1987), *reprinted in* 1988 U.S.C.C.A.N. 3, 3–4. The recipient community, Federal agencies, and the courts should have the benefit of continued reliance on past interpretations of Title IX and its regulations, and using ED's regulations as the model for other agencies promotes that consistency.

As discussed in the Notice of Proposed Rulemaking, however, these Title IX regulations are not identical to ED's regulations. *See* 64 FR 58569–58572. For example, the common rule includes modifications to be consistent with Supreme Court precedent and statutory changes that are not yet reflected in the Department of Education's regulations. In addition, as discussed below, the participating agencies have made a few additional revisions to the common rule in response to public comments.

Summary of Regulations

Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). This statute was modeled after Title VI, which prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance. The goal of Title IX is to ensure that Federal funds are not utilized for and do not support sex-based discrimination, and that individuals have equal opportunities, without regard to sex, to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs or activities. For example (and without limitation), subject to exceptions described in these Title IX regulations, Title IX prohibits a recipient from discriminating on the basis of sex in: student admissions, scholarship awards and tuition assistance, recruitment of students and employees, the provision of courses and other academic offerings, the provision of and participation in athletics and extracurricular activities, and all aspects of employment, including, but not limited to, selection, hiring, compensation, benefits, job assignments and classification, promotions, demotions, tenure, training, transfers, leave, layoffs, and termination. *See North Haven,* 456 U.S. at 521 (stating that Title IX ''must [be] accord[ed] . . . a sweep as broad as its language'' to realize goals of eliminating discrimination and promoting equal opportunity); *Cannon* v. *University of Chicago,* 441 U.S. 677, 709 (1979) (concluding that an implied private right of action was necessary for Title IX's full enforcement); *Franklin* v. *Gwinnett County Pub. Schs.,* 503 U.S. 60 (1992) (concluding that sexual harassment violates Title IX's proscription against sex discrimination).[3] Of course, Title IX prohibits discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs conducted by noneducational institutions, including, but not limited to, prisons, museums, job training institutes, and for profit and nonprofit organizations.

Thus, for example, these Title IX regulations will apply to such diverse activities as a forestry workshop run by a state park receiving funds from the Department of Interior; a boater education program sponsored by a county parks and recreation department receiving funding from the Coast Guard; a local course concerning how to start a small business, sponsored by the state department of labor that receives funding from the Small Business Administration; and state and local courses funded by the Federal Emergency Management Agency in planning how to deal with disasters. Vocational training for inmates in prisons receiving assistance from the Department of Justice is also covered by these Title IX regulations. In short, these Title IX regulations apply to the educational programs or activities of any entity receiving financial assistance from the participating agencies.

Summary of Subparts

Subpart A sets forth definitions as well as provisions concerning remedial action and affirmative action, required

process of drafting such regulations and will continue to enforce Title IX as the regulations are being developed.

[3] See Office for Civil Rights, Dep't of Educ., *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,* www.ed.gov/offices/OCR/ocrprod.html.

assurances, adoption of grievance procedures, and notification of nondiscrimination policies. The effect of state and other laws and other requirements is also explained. Subpart B addresses the scope or coverage of Title IX, and Subpart C addresses nondiscrimination on the basis of sex in admission and recruitment practices with respect to students.

Subpart D addresses nondiscrimination on the basis of sex in education programs or activities. Specific areas covered in this subpart are housing, access to course offerings, access to schools operated by local education agencies, counseling, financial assistance, employment assistance to students, health and insurance benefits and services, consideration of marital and parental status, and athletics.

Subpart E covers the prohibitions of discrimination on the basis of sex in employment in educational programs or activities. Specific aspects of employment that are addressed include hiring and employment criteria, recruitment, compensation, job classification and structure, promotion and termination, fringe benefits, consideration of marital or parental status, leave practices, advertising, and preemployment inquiries as to parental and marital status. This subpart also includes a provision to exempt from Title IX coverage employment actions where sex is a bona fide occupational qualification.

Finally, Subpart F addresses the agencies' respective procedures for implementation and enforcement of Title IX. By October 30, 2000, each agency will publish a notice in the **Federal Register** that identifies its respective programs that are covered by these Title IX regulations. Each agency will supplement or modify its notice of covered programs, as appropriate, to reflect changes in coverage.

Enforcement Procedures

For those agencies that have regulations to enforce Title VI, such procedures are adopted and referenced. Titles VI and IX address discrimination in federally assisted programs and have identical statutory enforcement schemes. The administrative enforcement procedures in Title VI regulations are virtually identical among the participating agencies, and differences are minor. For the Department of the Treasury and NARA, the specific text is set forth herein since neither has a Title VI regulation. The Corporation for Community and National Service, which is the successor to ACTION, is subject to the Title VI regulations promulgated by ACTION. *See* National and Community Service Trust Act of 1993, Public Law 103–82, section 203(c)(2), 107 Stat. 785, 892; 45 CFR Part 1203. It also should be noted that some agencies, based on other Federal laws, have already promulgated regulations under those statutes that similarly prohibit discrimination on the basis of sex in programs that receive Federal financial assistance. Such existing regulations remain in effect.

IV. Analysis of Comments and Revisions

The great majority of comments received expressed strong support for these regulations, and many noted that they represent a long overdue effort to provide an effective enforcement mechanism for Title IX. Many of these comments also urged prompt and final adoption of the common rule, emphasizing that the substance of the regulations should not be open to extensive debate or modification because it is almost identical to the Department of Education's longstanding Title IX regulations that were the subject of an extensive public comment process and congressional oversight and approval.

The participating agencies recognize the importance of ensuring that the recipient community has the benefit of continued reliance on past interpretations of Title IX and its regulations. Thus, the participating agencies have attempted to follow the recommendation of these commenters by endeavoring to minimize the extent to which these Title IX regulations differ from the Department of Education's Title IX rule.

The participating agencies have, however, carefully considered all of the comments submitted regarding these Title IX regulations. Responses to these comments, including specific clarifications and revisions, are set forth below.

Other Federal Agencies With Title IX Regulations

The participating agencies received one comment noting that the Supplementary Information Section of the proposed common rule cited only the Department of Education as previously having published a regulation to implement Title IX. This may have inadvertently given the impression that no other Federal agencies have adopted Title IX regulations.

The participating agencies therefore wish to clarify that, in fact, three other Federal agencies have previously published Title IX rules. The Department of Agriculture published 7 CFR part 15a on April 11, 1979; the Department of Health and Human Services (HHS) published 45 CFR part 86 on June 4, 1975; [4]; and the Department of Energy published 10 CFR part 1040 on June 13, 1980.

Comments Regarding the Danforth Amendment

Aside from comments expressing general support for the regulations, the issue most frequently commented upon pertained to section .235(d), which incorporates the Civil Rights Restoration Act's ''abortion neutrality'' provision, commonly known as the Danforth Amendment. More specifically, these comments concerned section .235(d)(1), which provides that: ''Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.''

One comment argued that the exceptions set forth by this provision were too broad and should not include an exception to save the life of a pregnant woman. Eight comments, however, expressed concern that the exceptions delineated in section .235(d)(1) were too narrow and should be expanded to include an additional exception for those cases in which pregnancy is the result of rape or incest.

After carefully reviewing these comments, the text of the amendment, and the relevant legislative history, the participating agencies have concluded that the exceptions set forth in the proposed common rule are neither too broad nor too narrow and are consistent with Congressional intent in adopting the Danforth Amendment. Thus, this provision has not been changed in the final common rule.

Comments Pertaining to the Presentation of Artistic Content

The participating agencies received a number of comments requesting clarification regarding the potential application of the common rule to the presentation of artistic content. In response to these comments, the participating agencies wish to confirm that this common rule does not cover,

[4] HHS' Title IX regulations were originally published by HEW but, pursuant to HEW's redesignation as HHS, all regulations in effect on May 4, 1980 that refer to HEW were deemed to refer and apply to HHS. *See* 20 U.S.C. 3508.

and is not intended to infringe upon, the presentation of artistic content protected by the First Amendment's guarantee of freedom of expression.

Indeed, normal rules of statutory construction require Federal agencies, wherever possible, to interpret statutory language in such a way as to avoid potential conflicts with the Constitution. The participating agencies fully intend to enforce the common rule in a manner consistent with this principle.

Comments Regarding Coverage

The participating agencies also received several comments related to coverage of the common rule. A few of these comments expressed concern that the common rule expands the scope of Title IX. This concern, however, is unfounded. The educational programs or activities operated by recipients of Federal funding have been covered by Title IX since its enactment in 1972. The common rule is merely an implementing regulation and does not expand the scope of coverage mandated by Title IX.

In addressing this concern, it is of course important to note that Title IX was amended by the Civil Rights Restoration Act of 1987, which defined the terms ''program'' and ''program or activity.'' Thus, the scope of coverage set forth by the common rule is based upon the mandate of Title IX as amended by the CRRA. The common rule incorporates the statutory definitions of ''program'' and ''program or activity'' but does not expand the scope of covered programs in any way.

One comment specifically questioned whether youth training programs conducted by the National Guard Bureau in conjunction with State Adjutant Generals would be covered by this rule. If such education or training programs are operated by recipients of Federal funding, they are covered by Title IX (and have been since 1972), and will be covered by these Title IX regulations.

A few comments also noted the need for additional guidance and clarification regarding what constitutes a covered education program or activity. In response to this concern, the participating agencies note that, pursuant to section .600, each Federal agency will be publishing a list of covered programs in the **Federal Register** by October 30, 2000. The participating agencies will also periodically republish such lists to reflect changes in covered programs. Individuals with questions about whether specific programs are covered may also raise them with the Federal funding agency or with the Department of Justice.

Comment Regarding the Definition of an ''Educational Institution''

One comment expressed concern that the definition of an ''educational institution'' covered by Title IX and set forth in the proposed common rule was too limited as it would not encompass certain entities outside the traditional school setting such as an orchestra. In response to this concern, the participating agencies note that this definition is the same as the definition of an ''educational institution'' set forth in the Department of Education's regulations and has not been modified in the final common rule. However, it is important to note that the key to coverage under Title IX and these Title IX regulations is an education program or activity operated by a recipient of Federal funding; while educational institutions are certainly one type of covered education program, clearly there are many others as well.

Comment Regarding the Definition of ''Recipient''

One comment argued that the definition of ''recipient'' set forth in the common rule is inconsistent with the Supreme Court's decision in *NCAA* v. *Smith*, 525 U.S. 459 (1999). Noting that the definition of a recipient includes any person or entity ''to whom Federal financial assistance is extended directly or through another recipient,'' this comment asserted that inclusion of the phrase ''or through another recipient'' would permit the government to argue that money received from a recipient by a third party makes that third party a recipient as well.

The concerns expressed in this comment are unfounded. Inclusion of the phrase ''or through another recipient'' merely ensures that sub-recipients (entities that receive Federal financial assistance through sub-grants from primary recipients) are covered by these Title IX regulations. Coverage of sub-recipients is in no way inconsistent with the NCAA decision or with the principle that indirect beneficiaries are not covered by Title IX. The definition of recipient set forth in the common rule in no way expands the scope of coverage of Title IX or these Title IX regulations and has, therefore, not been modified in the final common rule.

Comments Regarding Single-sex Programs

Several comments inquired about the viability of single-sex programs such as an educational science program targeted at young women and designed to encourage their interest in a profession in which they are underrepresented. Such courses may, under appropriate circumstances, be permissible as part of a remedial or affirmative action program as provided for by section .110 of these Title IX regulations.

In addition, other single-sex programs may be permissible under the common rule. For example, these Title IX regulations do not apply to the membership practices of many voluntary youth service organizations or to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and the Camp Fire Girls. *See* Section .215. Other examples of single-sex programs that are exempt from coverage under these Title IX regulations are programs or activities undertaken by the American Legion in connection with the organization or operation of a Boys State conference, a Boys Nation conference, a Girls State conference, or a Girls Nation conference. *See* Section .235(b).

It also should be noted that the U.S. Department of Education, in consultation with the Department of Justice, is reviewing provisions in ED's current Title IX regulations regarding single-sex programs to determine whether Title IX can and should be interpreted to permit certain sex-segregated educational programs or activities that are not based upon sex stereotyping, provided, of course, that equal educational opportunities and benefits are afforded to students of both sexes. Any proposed rule changes will be published in a proposed form for public comment, and conforming changes will be made in the regulations covered by this notice.

One comment also expressed concern that the regulations might preclude orchestras from establishing single-sex choirs necessary for the authentic presentation of certain artistic works. In response to this concern, the participating agencies note that these Title IX regulations specifically provide, consistent with the Department of Education's longstanding regulations, that recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. *See* Section .415(b)(6).

Finally, individuals or entities with more specific questions regarding the viability of a particular program may of course seek further guidance from the Federal funding agency or the Department of Justice.

Application of the Common Rule Outside Educational Institutions

Some comments raised concerns regarding the application of this common rule to educational programs or activities conducted outside traditional educational institutions. They noted that because this common rule is an extension of the Department of Education's Title IX regulations, which were designed to apply to schools, portions of the common rule may not always be a ''perfect fit'' for educational programs or activities operated by other entities. These comments therefore requested that agencies be given flexibility in applying these Title IX regulations to the wide variety of unique education programs or activities operated by recipients of Federal financial assistance.

In response to these comments, it should be noted that individual funding agencies may consider developing agency-specific guidance to address particular areas of concern. In addition, to further address these comments, the participating agencies have modified two provisions of the common rule to reflect its application to educational programs or activities outside traditional educational institutions. These modifications extend the exceptions in sections .235(b)(3) and .415(b)(5) to include education programs or activities other than those in a traditional educational institution. Thus, section .235(b)(3) now provides that these Title IX regulations do not preclude:

Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

and section .415(b)(5) now reads:

portions of classes in elementary and secondary schools or portions of education programs or activities that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

Comments Regarding Collegiate Athletics

Two comments raised concerns about the potential application of the common rule to collegiate athletic programs. These comments criticized the standards used to enforce Title IX in the collegiate athletic context and expressed concern that the participating agencies failed to fully take into account the likely costs of the common rule with regard to collegiate athletic programs and athletic scholarships. In response to these concerns, the participating agencies wish to clarify that virtually all collegiate athletic programs are already covered by the Department of Education's Title IX regulations, and have been since 1975, and will not be affected by this common rule.

Comments Regarding Quotas

A few comments expressed concerns about the possibility that the common rule might result in the application of gender-based quotas to academic programs. Such concerns are unfounded as the common rule neither permits nor imposes quotas.

These Title IX regulations do not permit or require the use of academic quotas. The Department of Education has had Title IX regulations for 25 years without once imposing a quota, and nothing in these Title IX regulations permits or requires the participating agencies to impose quotas.

The concerns about academic quotas expressed in these comments appear to stem from a number of misconceptions about the Department of Education's enforcement of Title IX in athletics, and the applicability of these enforcement standards to academic programs.

First, the Department of Education's Office for Civil Rights (''OCR'') does not use quotas to enforce Title IX in athletics. In fact, the First Circuit has expressly rejected the notion that OCR uses an impermissible quota system when evaluating whether institutions are providing athletic opportunities to male and female students on a nondiscriminatory basis. *See Cohen* v. *Brown*, 101 F.3d 155, 170–71, 175–76 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (1997).

Second, fears about academic quotas are unfounded because such fears are based on the further erroneous assumption that the same standards are used to evaluate athletic and academic programs. Athletics differ from academics in that institutions are permitted to provide many athletic opportunities on a sex-segregated basis. In other words, many athletic programs are sex-segregated by design, whereas Title IX requires that most academic programs be offered to all students regardless of sex. Thus, since most academic classes are not segregated by sex, different standards are used for assessing compliance with Title IX in academic programs.

In short, since OCR does not use a quota system when assessing whether male and female students have equal opportunities to participate in athletics, and since academic programs are not evaluated by the same standards as single-sex athletic programs, there is no validity to claims that the common rule will result in quotas for academic programs.

Indeed, in the 28 years since its passage, Title IX has significantly advanced the goal of creating equal educational opportunities for both sexes. Title IX has never permitted or required quotas in classrooms, and nothing in the common rule will permit or require quotas in classrooms. These Title IX regulations are not designed to regulate the number of men and women in particular courses, and the common rule will not lead to decreased educational opportunities for either sex. Rather, the common rule is simply designed to ensure that the participating agencies have an effective means of enforcing the equal opportunity mandates of Title IX.

Comments Regarding Affirmative Action and Disparate Impact

One of the comments raised a few additional concerns about quotas. One of these concerns dealt with the affirmative action provisions of the common rule. This comment criticized the inclusion of the phrase ''consistent with law'' in section .110(b), arguing that this fails to codify governing judicial decisions and encourages agencies to defer to interpretations of law advanced by political bureaucrats. The inclusion of this phrase, however, simply reflects the evolving nature of judicial decisions with respect to this issue and is merely designed to ensure that enforcement of these regulations is consistent with current judicial decisions. This entire common rule must, of course, always be interpreted consistent with governing law.

A second concern raised by this comment concerned the standard for disparate impact set forth in the regulations and the possibility that recipients might adopt quotas in order to avoid complaints. More specifically, this comment claimed that the disparate impact provisions in the common rule are contrary to existing Federal law regarding disparate impact under Title VII. This claim, however, is without merit as the disparate impact provisions of the common rule are consistent with Title VII and governing Supreme Court case law, as applied and interpreted by the Equal Employment Opportunity Commission.

Comments Questioning the Need for This Common Rule

A few comments questioned the need for these Title IX regulations and urged that they be withdrawn. More specifically, one comment noted a lack of evidence of discrimination in

education and questioned whether the common rule would provide any benefit for Americans. Similarly, two comments expressed concern that the rule regulates in areas already covered by other statutes and regulations and, thus, would create confusion in enforcement. One comment also raised concerns about the possibility that the rule might have unintended consequences for the construction industry.

In response to these concerns, it is important to reiterate that the participating agencies are promulgating these regulations in order to comply with a congressional mandate. As originally enacted in 1972, Title IX directed all Federal agencies providing financial assistance to recipients that operate education programs or activities to adopt regulations to achieve the statute's objectives. *See* 20 U.S.C. 1682. These Title IX regulations are thus nothing more than a long overdue effort to provide a regulatory enforcement mechanism for those Federal agencies that failed to adopt their own Title IX regulations when the statute was originally enacted.

In short, the adoption of these Title IX regulations is mandated by law. As such, the participating agencies are required to promulgate these regulations regardless of whether there may be any overlap with other statutes or regulations.

Comments Regarding Assurances

Several comments expressed concern that the requirement that assurances be provided with each and every application for Federal financial assistance would hinder efforts to streamline the Federal grants process. The participating agencies appreciate the importance of simplifying the grants process and of ensuring that agencies are able to obtain assurances as efficiently as possible. As such, the participating agencies have modified section .115 of the final common rule to provide agencies with greater flexibility in dealing with this issue.

Specifically, the participating agencies have eliminated the requirement that every application for Federal financial assistance contain or be accompanied by an assurance. Instead, the final common rule requires only that all applications for Federal financial assistance, or awards of Federal financial assistance, ''contain, be accompanied by, or be covered by'' an assurance. What is important is that the grant recipient understand its responsibilities under Title IX. However, by giving agencies the flexibility to obtain assurances at either the application or the award stage of the process, and by eliminating the need for grant-by-grant certifications, the final common rule establishes a less burdensome process for dealing with assurances. Thus, the first sentence of section .115(a) has been amended to read as follows:

> Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations.

In attempting to further ensure the existence of sufficient flexibility in dealing with assurances, the participating agencies have also modified section .115(c)(1) regarding the content and form of these assurances. The proposed common rule appeared to contain a requirement that agencies use exact language in their assurances. In response to a comment requesting permission to use equivalent language, the participating agencies have modified this provision so that it now reads as follows:

> The assurances required * * * shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: *** Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

Comments Regarding Financial and Administrative Burdens

A few comments also raised concerns about the potential financial and administrative burdens associated with these Title IX regulations. More specifically, one comment expressed concern about the broad powers of designated agency officials and noted that recipients might be burdened by having to respond to 25 differing agency interpretations of the common rule.

In response to this comment, the participating agencies wish to clarify a few points. First, this comment makes the unlikely assumptions that a recipient is funded by all of the participating agencies and that these agencies have significantly different interpretations of these regulations. Second, even in those cases in which a recipient is funded by more than one Federal agency, there are unlikely to be duplicative enforcement efforts.

Indeed, the participating agencies are working to develop a Delegation Agreement to share enforcement responsibilities and information. This Delegation Agreement will ensure that Title IX is enforced in the most efficient and effective manner, while at the same time avoiding duplicative inquiries by the Federal government and any undue burden on recipients due to multiple inquiries.

Several comments also questioned whether the common rule properly complied with all regulatory and statutory requirements. More specifically, one comment raised concerns about the Paperwork Reduction Act provisions of these Title IX regulations.

In response to this comment, the participating agencies note that OMB has indeed reviewed this common rule and approved the Paperwork Reduction Act provisions. In addition, as discussed above, the participating agencies have modified the provisions regarding assurances, thus further reducing the information collection requirements associated with these regulations.

It is also worth noting that many of the concerns raised regarding the Paperwork Reduction Act estimates were based on the mistaken assumption that all entities covered by the common rule are subject to the self-evaluation requirements.[5] As explained in the preamble to the proposed rule, however, the participating agencies estimate that fewer than 10 entities are likely to be affected by these requirements.

The self-evaluation provisions were included in the common rule to allow for the possible but rare instance where this requirement might continue to be relevant for certain recipients. It is important to note that this requirement applies only to recipient educational institutions, and virtually all such recipients are already covered by the Department of Education's regulations and have previously complied with these provisions. Moreover, as explained in the preamble to the proposed rule, if a recipient educational institution already has conducted a self-evaluation under Title IX, it need not conduct a new self-evaluation as a result of receiving funds from a participating agency, unless the previously conducted self-evaluation is found to be incomplete or not in compliance with the regulations. Thus, concerns regarding the paperwork burdens associated with this provision are unfounded.

Other comments questioned whether the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the

[5] The provisions regarding self-evaluation require that recipient educational institutions evaluate their current services, policies, and practices and make any modifications necessary to ensure compliance with Title IX.

Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 609, and the Congressional Review Act, 5 U.S.C. 801–808, had been met.

As discussed in the Supplementary Information Section of the proposed rule, many of the requirements set forth in these statutes do not apply to these regulations since this common rule is not a ''major rule.'' In setting forth the factual basis for this determination, the participating agencies explained that this common rule is not a ''major rule'' in large part because these regulations do not impose any new substantive obligations on Federal funding recipients. More specifically, the participating agencies explained that:

All recipients of Federal funding that operate educational programs or activities have been bound by Title IX's antidiscrimination provision since 1972. Individual participants in such programs have thus long had the right to be free from sex discrimination, and have enjoyed the corollary ability to file an administrative complaint and/or a private lawsuit when they believe their rights to have been violated. The common rule merely ensures that individuals receive notice of their rights under Title IX and outlines a process for handling administrative complaints for those agencies that do not yet have such a process in place for Title IX. Indeed, by identifying a coherent scheme for resolving complaints administratively, this proposal may help prevent costly private litigation.

Entities receiving funding from one of the four federal agencies that already have Title IX regulations will face no new requirements under the common rule. Those entities receiving funding from an agency that does not currently have Title IX regulations will now be required to notify their students and employees that sex discrimination is prohibited and to adopt and publish grievance procedures outlining the process for filing an administrative complaint.

To the extent that these requirements will be new for some entities, they are not burdensome. Indeed, Federal funding recipients are already required to have most of these procedures under other civil rights statutes, and would generally fulfill the requirements of the common rule by including Title IX within their existing processes. Similarly, the common rule requires a covered recipient to designate an employee to coordinate Title IX compliance efforts. In many cases, if not most, that person would be the same person currently responsible for handling complaints under the other antidiscrimination laws. 64 FR 58573.

As such, the participating agencies have certified that this common rule is not a ''major rule.'' These statutes therefore require no further action by the participating agencies.

Nevertheless, upon careful consideration of these comments, the participating agencies have decided to delete one of the notice provisions in the common rule. Specifically, the participating agencies have modified section .140 of the common rule to delete the requirement that notice be published in local newspapers. This modification should further reduce any potential financial and administrative costs associated with these regulations.

Minor Editorial Changes

Finally, in addition to the modifications discussed above, the participating agencies have made a few minor editorial changes to the common rule. Most of these changes are simply designed to ensure that the terms ''program'' and ''program or activity'' are not used in any manner other than that contemplated by the CRRA.

As discussed above, the participating agencies carefully considered all comments submitted in response to the Notice of Proposed Rulemaking, the majority of which expressed strong support for these Title IX regulations. Although the participating agencies have made several modifications in response to concerns raised during the notice and comment period, they have endeavored to minimize changes to the substantive nondiscrimination provisions of the rule to promote consistency with the Department of Education's Title IX regulations. In doing so, the participating agencies hope to ensure that recipients and beneficiaries will have the benefit of continued reliance on past interpretations of Title IX and Title IX regulations, since the Department of Education's regulations have been the subject of extensive public comment, congressional review, and judicial scrutiny.

V. Applicable Executive Orders and Regulatory Certifications

Executive Order 12067

These Title IX regulations have been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

Executive Order 12866

These Title IX regulations have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The participating agencies have determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, yet it is not economically significant as defined in section 3(f)(1), and, therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act of 1996

The participating agencies have determined that these Title IX regulations are not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. All of the entities that are subject to these regulations are already covered by Title IX. While these regulations address standards of liability and require that recipients establish grievance procedures and take other action, a substantial number of entities already are subject to other agencies' Title IX regulations that impose the same requirements. Accordingly, these regulations will not impose new obligations on many recipients.

Unfunded Mandates Reform Act of 1995

These Title IX regulations enforce a statutory prohibition on discrimination on the basis of sex and, therefore, the participating agencies certify that no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995. Furthermore, these regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments.

The Regulatory Flexibility Act

The participating agencies, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), have reviewed these Title IX regulations and by approving them certify that these regulations will not have a significant economic impact on a substantial number of small entities because all of the entities that are subject to these regulations are already subject to Title IX, and a substantial number of entities

already are subject to the Title IX regulations of other agencies.

As discussed above, this is not a ''major rule,'' nor will it have a significant economic impact on a substantial number of small entities, in large part because these regulations do not impose any new substantive obligations on Federal funding recipients. All recipients of Federal funding that operate educational programs or activities have been bound by Title IX's antidiscrimination provision since 1972. Individual participants in such programs have thus long had the right to be free from sex discrimination, and have enjoyed the corollary ability to file an administrative complaint and/or a private lawsuit when they believe their rights to have been violated. The common rule merely ensures that such individuals receive notice regarding their rights under Title IX and outlines a process for handling administrative complaints for those agencies that do not yet have such a process in place for Title IX. Indeed, by identifying a coherent scheme for resolving complaints administratively, this proposal may help prevent costly private litigation.

Entities receiving funding from one of the four Federal agencies that already have Title IX regulations will face no new requirements under the common rule. Those entities receiving funding from an agency that does not currently have Title IX regulations will now be required to notify their students and employees that sex discrimination is prohibited and to adopt and publish grievance procedures outlining the process for filing an administrative complaint.

To the extent these requirements will be new for some entities, they are not burdensome. Indeed, Federal funding recipients are already required to have most of these procedures under other civil rights statutes, and would generally fulfill the requirements of the common rule by including Title IX within their existing processes. Similarly, the common rule also requires a covered recipient to designate an employee to coordinate Title IX compliance efforts. In many, if not most, cases, that person would be the same person currently responsible for handling complaints under the other antidiscrimination laws.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), OMB has reviewed and approved the information collection requirements associated with this common rule. OMB control number 1190–0016.

Executive Order 13132

These Title IX regulations 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. These Title IX regulations do not subject recipients of Federal funding to any new substantive obligations because all recipients of Federal funding that operate education programs or activities have been bound by Title IX's antidiscrimination provision since 1972. Moreover, these Title IX regulations are required by statute; Congress specifically directed Federal agencies to adopt implementing regulations when Title IX was enacted. Therefore, in accordance with section 6 of Executive Order 13132, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. No further action is required.

Text of the Common Rule

The text of this common rule appears below:

[PART/Subpart] — NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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.505 Employment criteria.
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.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

.600 Notice of covered programs.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

Subpart A—Introduction

§ .100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

§ .105 Definitions.

As used in these Title IX regulations, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a

local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means [to be inserted by agency].

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth at [to be inserted by agency].

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§ .110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ .115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § .110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ .120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ .205 through .235(a).

§ .125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ .130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ .135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§ .140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees,

sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ .300 through .310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § .135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ .200 Application.

Except as provided in §§ .205 through .235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ .205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

§ .210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ .215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ .220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ .225 and .230, and §§ .300 through .310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ .300 through .310.* Except as provided in paragraphs (d) and (e) of this section, §§ .300 through .310 apply to each recipient. A recipient to which §§ .300 through .310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ .300 through .310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ .300 through .310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§ .300 through .310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ .225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ .300 through .310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ .300 through .310.

§ .230 Transition plans.

(a) *Submission of plans.* An institution to which § .225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § .225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ .300 through .310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § .225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ .235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity* or *program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a ''program or activity'' subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any

benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ .300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ .300 through §§ .310 apply, except as provided in §§ .225 and §§ .230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ .300 through .310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ .300 through .310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § .235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss'' or ''Mrs.'' A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ .305 Preference in admission.

A recipient to which §§ .300 through .310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ .300 through .310.

§ .310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ .300 through .310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § .110(a), and may choose to undertake such efforts as affirmative action pursuant to § .110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ .300 through .310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ .300 through .310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ .400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections .400 through .455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ .300 through .310 do not apply, or an entity, not a recipient, to which §§ .300 through .310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ .400 through .455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided,* that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or

activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ .405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ .410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ .415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ .420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ .425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ .430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § .450.

§ .435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ .500 through .550.

§ .440 Health and insurance benefits and services.

Subject to § .235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ .500 through .550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ .445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § .235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ .450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the

designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

§ .455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ .500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ .500 through .550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§ .500 through .550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ .505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ .510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ .500 through .550.

§ .515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§ .520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for

similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § .550.

§ .525 Fringe benefits.

(a) *''Fringe benefits'' defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § .515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ .530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to § 235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ .535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§ .500 through .550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ .540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ .545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss'' or ''Mrs.''

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ .550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ .500 through .550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ .600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the **Federal Register** a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

Final Adoption of the Common Rule

The final adoption of the common rule by the participating agencies, as modified by agency-specific text, is set forth below:

NUCLEAR REGULATORY COMMISSION

10 CFR Part 5

FOR FURTHER INFORMATION CONTACT: Irene P. Little, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–7380.

List of Subjects in 10 CFR Part 5

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Graduate fellowship program, Grant programs—education, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, Sex

discrimination, State agreement program, Student aid, Women.

William D. Travers,

Executive Director for Operations, Nuclear Regulatory Commission.

For the reasons stated in the preamble, the Nuclear Regulatory Commission amends 10 CFR chapter I, as follows:

1. Part 5 is added as set forth at the end of the common preamble to read as follows:

PART 5—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
5.100 Purpose and effective date.
5.105 Definitions.
5.110 Remedial and affirmative action and self-evaluation.
5.115 Assurance required.
5.120 Transfers of property.
5.125 Effect of other requirements.
5.130 Effect of employment opportunities.
5.135 Designation of responsible employee and adoption of grievance procedures.
5.140 Dissemination of policy.

Subpart B—Coverage

5.200 Application.
5.205 Educational institutions and other entities controlled by religious organizations.
5.210 Military and merchant marine educational institutions.
5.215 Membership practices of certain organizations.
5.220 Admissions.
5.225 Educational institutions eligible to submit transition plans.
5.230 Transition plans.
5.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

5.300 Admission.
5.305 Preference in admission.
5.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

5.400 Education programs or activities.
5.405 Housing.
5.410 Comparable facilities.
5.415 Access to course offerings.
5.420 Access to schools operated by LEAs.
5.425 Counseling and use of appraisal and counseling materials.
5.430 Financial assistance.
5.435 Employment assistance to students.
5.440 Health and insurance benefits and services.
5.445 Marital or parental status.
5.450 Athletics.
5.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

5.500 Employment.
5.505 Employment criteria.
5.510 Recruitment.
5.515 Compensation.
5.520 Job classification and structure.
5.525 Fringe benefits.
5.530 Marital or parental status.
5.535 Effect of state or local law or other requirements.
5.540 Advertising.
5.545 Pre-employment inquiries.
5.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

5.600 Notice of covered programs.
5.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 5.105 [Amended]

2. In § 5.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Program Manager, Civil Rights Program'' is added in its place.

3. In § 5.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 5.100 through 5.605'' is added in its place.

4. Section 5.605 is added to read as follows:

§ 5.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 10 CFR 4.21 through 4.75.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 113

FOR FURTHER INFORMATION CONTACT: Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance, U.S. Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416, (202) 205–6750.

List of Subjects in 13 CFR Part 113

Administrative practice and procedure, Civil rights, Colleges and universities, Educational facilities, Equal employment opportunity, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Women.

Aida Alvarez,

Administrator, Small Business Administration.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 113 as follows:

PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

1. The authority for part 113 is revised to read as follows:

Authority: 15 U.S.C. 633, 634, 687, 1691; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688; 29 U.S.C. 794; Sec. 5, Pub. L. 85–536, 72 Stat. 385, as amended; Sec. 308, Pub. L. 85–699, 72 Stat. 694, as amended.

2. Sections 113.1 through 113.8 are designated as subpart A and the subpart heading is added to read as follows:

Subpart A—General Provisions

3. Appendix A to part 113 is redesignated as Appendix A to subpart A of part 113 and the heading is revised to read as follows:

Appendix A to Subpart A of Part 113

4. Subpart B, consisting of §§ 113.100 through 113.605, is added to part 113 as set forth at the end of the common preamble to read as follows:

Subpart B—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Sec.

Introduction

113.100 Purpose and effective date.
113.105 Definitions.
113.110 Remedial and affirmative action and self-evaluation.
113.115 Assurance required.
113.120 Transfers of property.
113.125 Effect of other requirements.
113.130 Effect of employment opportunities.
113.135 Designation of responsible employee and adoption of grievance procedures.
113.140 Dissemination of policy.

Coverage

113.200 Application.

113.205 Educational institutions and other entities controlled by religious organizations.

113.210 Military and merchant marine educational institutions.

113.215 Membership practices of certain organizations.
113.220 Admissions.
113.225 Educational institutions eligible to submit transition plans.
113.230 Transition plans.
113.235 Statutory amendments.

Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

113.300 Admission.
113.305 Preference in admission.
113.310 Recruitment.

Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

113.400 Education programs or activities.
113.405 Housing.
113.410 Comparable facilities.
113.415 Access to course offerings.
113.420 Access to schools operated by LEAs.
113.425 Counseling and use of appraisal and counseling materials.
113.430 Financial assistance.
113.435 Employment assistance to students.
113.440 Health and insurance benefits and services.
113.445 Marital or parental status.
113.450 Athletics.
113.455 Textbooks and curricular material.

Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

113.500 Employment.
113.505 Employment criteria.
113.510 Recruitment.
113.515 Compensation.
113.520 Job classification and structure.
113.525 Fringe benefits.
113.530 Marital or parental status.
113.535 Effect of state or local law or other requirements.
113.540 Advertising.
113.545 Pre-employment inquiries.
113.550 Sex as a bona fide occupational qualification.

Procedures

113.600 Notice of covered programs.
113.605 Enforcement procedures.

Subpart B—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

5. The designations for Subparts A through F as set forth in the common rule are removed.

§ 113.105 [Amended]

6. In § 113.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Assistant Administrator for Equal Employment and Civil Rights Compliance'' is added in its place.

7. In § 113.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 113.100 through 113.605'' is added in its place.

8. Section 113.605 is added to read as follows:

§ 113.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 13 CFR part 112.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1253

FOR FURTHER INFORMATION CONTACT: Fred Dalton, Office of Equal Opportunity Programs, NASA Headquarters (Code EI), Washington, DC 20546, (202) 358–0941.

List of Subjects in 14 CFR Part 1253

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Marital status discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: June 1, 2000.

Daniel S. Goldin,

Administrator, National Aeronautics and Space Administration.

For the reasons stated in the preamble, the National Aeronautics and Space Administration amends 14 CFR chapter V, as follows:

1. Part 1253 is added as set forth at the end of the common preamble to read as follows:

PART 1253—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
1253.100 Purpose and effective date.
1253.105 Definitions.
1253.110 Remedial and affirmative action and self-evaluation.
1253.115 Assurance required.
1253.120 Transfers of property.
1253.125 Effect of other requirements.
1253.130 Effect of employment opportunities.
1253.135 Designation of responsible employee and adoption of grievance procedures.
1253.140 Dissemination of policy.

Subpart B—Coverage

1253.200 Application.
1253.205 Educational institutions and other entities controlled by religious organizations.
1253.210 Military and merchant marine educational institutions.
1253.215 Membership practices of certain organizations.
1253.220 Admissions.
1253.225 Educational institutions eligible to submit transition plans.
1253.230 Transition plans.
1253.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1253.300 Admission.
1253.305 Preference in admission.
1253.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

1253.400 Education programs or activities.
1253.405 Housing.
1253.410 Comparable facilities.
1253.415 Access to course offerings.
1253.420 Access to schools operated by LEAs.
1253.425 Counseling and use of appraisal and counseling materials.
1253.430 Financial assistance.
1253.435 Employment assistance to students.
1253.440 Health and insurance benefits and services.
1253.445 Marital or parental status.
1253.450 Athletics.
1253.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

1253.500 Employment.
1253.505 Employment criteria.
1253.510 Recruitment.
1253.515 Compensation.
1253.520 Job classification and structure.
1253.525 Fringe benefits.
1253.530 Marital or parental status.
1253.535 Effect of state or local law or other requirements.
1253.540 Advertising.
1253.545 Pre-employment inquiries.
1253.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

1253.600 Notice of covered programs.
1253.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1253.105 [Amended]

2. In § 1253.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Associate Administrator for Equal Opportunity Programs'' is added in its place.

3. In § 1253.105 in the definition of ''Title IX regulations,'' the brackets and

text within brackets are removed and ''§§ 1253.100 through 1253.605'' is added in its place.

4. Section 1253.605 is added to read as follows:

§ 1253.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 14 CFR 1250.105 through 1250.110.

DEPARTMENT OF COMMERCE

15 CFR Part 8a

RIN 0690–AA28

FOR FURTHER INFORMATION CONTACT: Lawrence N. Self, Acting Director, Office of Civil Rights, Department of Commerce, Room 6010, Washington, DC 20230 (202) 482–0625.

List of Subjects in 15 CFR Part 8a

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Reporting and recordkeeping requirements, Sex discrimination, Women.

Lawrence N. Self,

Acting Director, Office of Civil Rights, Department of Commerce.

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR subtitle A, as follows:

1. Part 8a is added as set forth at the end of the common preamble to read as follows:

PART 8a—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
8a.100 Purpose and effective date.
8a.105 Definitions.
8a.110 Remedial and affirmative action and self-evaluation.
8a.115 Assurance required.
8a.120 Transfers of property.
8a.125 Effect of other requirements.
8a.130 Effect of employment opportunities.
8a.135 Designation of responsible employee and adoption of grievance procedures.
8a.140 Dissemination of policy.

Subpart B—Coverage

8a.200 Application.
8a.205 Educational institutions and other entities controlled by religious organizations.
8a.210 Military and merchant marine educational institutions.
8a.215 Membership practices of certain organizations.
8a.220 Admissions.
8a.225 Educational institutions eligible to submit transition plans.
8a.230 Transition plans.
8a.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

8a.300 Admission.
8a.305 Preference in admission.
8a.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

8a.400 Education programs or activities.
8a.405 Housing.
8a.410 Comparable facilities.
8a.415 Access to course offerings.
8a.420 Access to schools operated by LEAs.
8a.425 Counseling and use of appraisal and counseling materials.
8a.430 Financial assistance.
8a.435 Employment assistance to students.
8a.440 Health and insurance benefits and services.
8a.445 Marital or parental status.
8a.450 Athletics.
8a.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

8a.500 Employment.
8a.505 Employment criteria.
8a.510 Recruitment.
8a.515 Compensation.
8a.520 Job classification and structure.
8a.525 Fringe benefits.
8a.530 Marital or parental status.
8a.535 Effect of state or local law or other requirements.
8a.540 Advertising.
8a.545 Pre-employment inquiries.
8a.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

8a.600 Notice of covered programs.
8a.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 8a.105 [Amended]

2. In § 8a.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and the following text is added in its place: ''with respect to any program receiving Federal financial assistance, the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. *Designated agency official* also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under these Title IX regulations'.

3. In § 8a.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 8a.100 through 8a.605'' is added in its place.

4. Section 8a.605 is added to read as follows:

§ 8a.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 15 CFR 8.7 through 8.15, and 13 CFR part 317.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1317

FOR FURTHER INFORMATION CONTACT: Franklin E. Alford, Manager, Supplier and Diverse Business Relations, 1101 Market Street, WR 3J, Chattanooga, Tennessee 37402, (423) 751–7203.

List of Subjects in 18 CFR Part 1317

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Equal educational opportunity, Equal employment opportunity, Marital status discrimination, Reporting and recordkeeping requirements, Sex discrimination, Women.

Franklin E. Alford,

Manager, Supplier and Diverse Business Relations, Tennessee Valley Authority.

For the reasons stated in the preamble, the Tennessee Valley Authority amends 18 CFR chapter XIII, as follows:

1. Part 1317 is added as set forth at the end of the common preamble to read as follows:

PART 1317—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
1317.100 Purpose and effective date.
1317.105 Definitions.
1317.110 Remedial and affirmative action and self-evaluation.
1317.115 Assurance required.
1317.120 Transfers of property.
1317.125 Effect of other requirements.
1317.130 Effect of employment opportunities.
1317.135 Designation of responsible employee and adoption of grievance procedures.
1317.140 Dissemination of policy.

Subpart B—Coverage

1317.200 Application.
1317.205 Educational institutions and other entities controlled by religious organizations.
1317.210 Military and merchant marine educational institutions.
1317.215 Membership practices of certain organizations.
1317.220 Admissions.
1317.225 Educational institutions eligible to submit transition plans.
1317.230 Transition plans.
1317.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited 1317.300 Admission.

1317.305 Preference in admission.
1317.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

1317.400 Education programs or activities.
1317.405 Housing.
1317.410 Comparable facilities.
1317.415 Access to course offerings.
1317.420 Access to schools operated by LEAs.
1317.425 Counseling and use of appraisal and counseling materials.
1317.430 Financial assistance.
1317.435 Employment assistance to students.
1317.440 Health and insurance benefits and services.
1317.445 Marital or parental status.
1317.450 Athletics.
1317.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

1317.500 Employment.
1317.505 Employment criteria.
1317.510 Recruitment.
1317.515 Compensation.
1317.520 Job classification and structure.
1317.525 Fringe benefits.
1317.530 Marital or parental status.
1317.535 Effect of state or local law or other requirements.
1317.540 Advertising.
1317.545 Pre-employment inquiries.
1317.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

1317.600 Notice of covered programs.
1317.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1317.105 [Amended]

2. In § 1317.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Manager, Supplier and Diverse Business Relations'' is added in its place.

3. In § 1317.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 1317.100 through 1317.605'' is added in its place.

4. Section 1317.605 is added to read as follows:

§ 1317.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 18 CFR part 1302.

DEPARTMENT OF STATE

22 CFR Part 146

FOR FURTHER INFORMATION CONTACT: Paul M. Coran, Attorney Advisor, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 4216, Washington, D.C. 20520, (202) 647–9295.

List of Subjects in 22 CFR Part 146

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Sex discrimination, Women.

David G. Carpenter,

Acting Under Secretary of State for Management.

For the reasons stated in the preamble, the Department of State amends 22 CFR Chapter I, subchapter O, as follows:

1. Part 146 is added as set forth at the end of the common preamble to read as follows:

PART 146—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
146.100 Purpose and effective date.
146.105 Definitions.
146.110 Remedial and affirmative action and self-evaluation.
146.115 Assurance required.
146.120 Transfers of property.
146.125 Effect of other requirements.
146.130 Effect of employment opportunities.
146.135 Designation of responsible employee and adoption of grievance procedures.
146.140 Dissemination of policy.

Subpart B—Coverage

146.200 Application
146.205 Educational institutions and other entities controlled by religious organizations.
146.210 Military and merchant marine educational institutions.
146.215 Membership practices of certain organizations.
146.220 Admissions.
146.225 Educational institutions eligible to submit transition plans.
146.230 Transition plans.
146.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

146.300 Admission.
146.305 Preference in admission.
146.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

146.400 Education programs or activities.
146.405 Housing.
146.410 Comparable facilities.
146.415 Access to course offerings.
146.420 Access to schools operated by LEAs.
146.425 Counseling and use of appraisal and counseling materials.
146.430 Financial assistance.
146.435 Employment assistance to students.
146.440 Health and insurance benefits and services.
146.445 Marital or parental status.
146.450 Athletics.
146.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

146.500 Employment.
146.505 Employment criteria.
146.510 Recruitment.
146.515 Compensation.
146.520 Job classification and structure.
146.525 Fringe benefits.
146.530 Marital or parental status.
146.535 Effect of state or local law or other requirements.
146.540 Advertising.
146.545 Pre-employment inquiries.
146.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

146.600 Notice of covered programs.
146.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 146.105 [Amended]

2. In § 146.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Deputy Assistant Secretary for the Office of Equal Employment Opportunity and Civil Rights' is added in its place.

3. In § 146.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 146.100 through 146.605'' is added in its place.

4. Section 146.605 is added to read as follows:

§ 146.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 22 CFR part 141.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 229

FOR FURTHER INFORMATION CONTACT: Jessalyn L. Pendarvis, Director, Office of Equal Opportunity Programs, Agency for International Development, Washington, D.C. 20523, (202) 712–1110.

List of Subjects in 22 CFR Part 229

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Jessalyn L. Pendarvis,

Director, Office of Equal Opportunity Programs, Agency for International Development.

For the reasons stated in the preamble, the Agency for International Development amends 22 CFR chapter II, as follows:

1. Part 229 is added as set forth at the end of the common preamble to read as follows:

PART 229—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
229.100 Purpose and effective date.
229.105 Definitions.
229.110 Remedial and affirmative action and self-evaluation.
229.115 Assurance required.
229.120 Transfers of property.
229.125 Effect of other requirements.
229.130 Effect of employment opportunities.
229.135 Designation of responsible employee and adoption of grievance procedures.
229.140 Dissemination of policy.

Subpart B—Coverage

229.200 Application.
229.205 Educational institutions and other entities controlled by religious organizations.
229.210 Military and merchant marine educational institutions.
229.215 Membership practices of certain organizations.
229.220 Admissions.
229.225 Educational institutions eligible to submit transition plans.
229.230 Transition plans.
229.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

229.300 Admission.
229.305 Preference in admission.
229.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

229.400 Education programs or activities.
229.405 Housing.
229.410 Comparable facilities.
229.415 Access to course offerings.
229.420 Access to schools operated by LEAs.
229.425 Counseling and use of appraisal and counseling materials.
229.430 Financial assistance.
229.435 Employment assistance to students.
229.440 Health and insurance benefits and services.
229.445 Marital or parental status.
229.450 Athletics.
229.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

229.500 Employment.
229.505 Employment criteria.
229.510 Recruitment.
229.515 Compensation.
229.520 Job classification and structure.
229.525 Fringe benefits.
229.530 Marital or parental status.
229.535 Effect of state or local law or other requirements.
229.540 Advertising.
229.545 Pre-employment inquiries.
229.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

229.600 Notice of covered programs.
229.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 229.105 [Amended]

2. In § 229.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Director, Office of Equal Opportunity Programs'' is added in its place.

3. In § 229.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 229.100 through 229.605'' is added in its place.

4. Section 229.605 is added to read as follows:

§ 229.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 22 CFR part 209.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3

[Agency Docket No. FR–4301–F–02]

RIN 2501–AC42

FOR FURTHER INFORMATION CONTACT: David H. Enzel, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, Washington, D.C. 20410–0500, (202) 708–0836. (This telephone number is not toll-free.) Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

List of Subjects in 24 CFR Part 3

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Andrew Cuomo,

Secretary of Housing and Urban Development.

For the reasons stated in the preamble, the Department of Housing and Urban Development amends 24 CFR subtitle A, as follows:

1. Part 3 is added as set forth at the end of the common preamble to read as follows:

PART 3—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
3.100 Purpose and effective date.
3.105 Definitions.
3.110 Remedial and affirmative action and self-evaluation.
3.115 Assurance required.

3.120 Transfers of property.
3.125 Effect of other requirements.
3.130 Effect of employment opportunities.
3.135 Designation of responsible employee and adoption of grievance procedures.
3.140 Dissemination of policy.

Subpart B—Coverage

3.200 Application.
3.205 Educational institutions and other entities controlled by religious organizations.
3.210 Military and merchant marine educational institutions.
3.215 Membership practices of certain organizations.
3.220 Admissions.
3.225 Educational institutions eligible to submit transition plans.
3.230 Transition plans.
3.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

3.300 Admission.
3.305 Preference in admission.
3.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

3.400 Education programs or activities.
3.405 Housing.
3.410 Comparable facilities.
3.415 Access to course offerings.
3.420 Access to schools operated by LEAs.
3.425 Counseling and use of appraisal and counseling materials.
3.430 Financial assistance.
3.435 Employment assistance to students.
3.440 Health and insurance benefits and services.
3.445 Marital or parental status.
3.450 Athletics.
3.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

3.500 Employment.
3.505 Employment criteria.
3.510 Recruitment.
3.515 Compensation.
3.520 Job classification and structure.
3.525 Fringe benefits.
3.530 Marital or parental status.
3.535 Effect of state or local law or other requirements.
3.540 Advertising.
3.545 Pre-employment inquiries.
3.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

3.600 Notice of covered programs.
3.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 3.105 [Amended]

2. In § 3.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Assistant Secretary for Fair Housing and Equal Opportunity'' is added in its place.

3. In § 3.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 3.100 through 3.605'' is added in its place.

4. Section 3.605 is added to read as follows:

§ 3.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 24 CFR part 1.

DEPARTMENT OF JUSTICE

28 CFR Part 54

[AG Order No. 2320–2000]

RIN 1190–AA28

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, P.O. Box 66560, Washington, D.C. 20036–6560, (202) 307–2222.

List of Subjects in 28 CFR Part 54

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: August 10, 2000.

Janet Reno,

Attorney General.

For the reasons stated in the preamble, the Department of Justice amends 28 CFR chapter I, as follows:

1. Part 54 is added as set forth at the end of the common preamble to read as follows:

PART 54—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
54.100 Purpose and effective date.
54.105 Definitions.
54.110 Remedial and affirmative action and self-evaluation.
54.115 Assurance required.
54.120 Transfers of property.
54.125 Effect of other requirements.
54.130 Effect of employment opportunities.
54.135 Designation of responsible employee and adoption of grievance procedures.
54.140 Dissemination of policy.

Subpart B—Coverage

54.200 Application.
54.205 Educational institutions and other entities controlled by religious organizations.
54.210 Military and merchant marine educational institutions.
54.215 Membership practices of certain organizations.
54.220 Admissions.
54.225 Educational institutions eligible to submit transition plans.
54.230 Transition plans.
54.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

54.300 Admission.
54.305 Preference in admission.
54.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

54.400 Education programs or activities.
54.405 Housing.
54.410 Comparable facilities.
54.415 Access to course offerings.
54.420 Access to schools operated by LEAs.
54.425 Counseling and use of appraisal and counseling materials.
54.430 Financial assistance.
54.435 Employment assistance to students.
54.440 Health and insurance benefits and services.
54.445 Marital or parental status.
54.450 Athletics.
54.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

54.500 Employment.
54.505 Employment criteria.
54.510 Recruitment.
54.515 Compensation.
54.520 Job classification and structure.
54.525 Fringe benefits.
54.530 Marital or parental status.
54.535 Effect of state or local law or other requirements.
54.540 Advertising.
54.545 Pre-employment inquiries.
54.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

54.600 Notice of covered programs.
54.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 54.105 [Amended]

2. In § 54.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''the Assistant Attorney

General, Civil Rights Division'' is added in its place.

3. In § 54.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 54.100 through 54.605'' is added in its place.

4. Section 54.605 is added to read as follows:

§ 54.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 28 CFR 42.106 through 42.111.

DEPARTMENT OF LABOR

29 CFR Part 36

FOR FURTHER INFORMATION CONTACT: Bud West, Senior Policy Advisor, Civil Rights Center, Department of Labor, 200 Constitution Avenue, N.W., Room N–4123, Washington, D.C. 20210, (202) 219–8927 (voice), (202) 219–6118, or (202) 326–2577 (TTY/TTD).

List of Subjects in 29 CFR Part 36

Administrative practice and procedure, Civil rights, Equal educational opportunity, Equal employment opportunity, Grant programs—labor, Investigations, Reporting and recordkeeping requirements, Sex discrimination, Women.

Alexis M. Herman,

Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor amends 29 CFR subtitle A, as follows:

1. Part 36 is added as set forth at the end of the common preamble to read as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
36.100 Purpose and effective date.
36.105 Definitions.
36.110 Remedial and affirmative action and self-evaluation.
36.115 Assurance required.
36.120 Transfers of property.
36.125 Effect of other requirements.
36.130 Effect of employment opportunities.
36.135 Designation of responsible employee and adoption of grievance procedures.
36.140 Dissemination of policy.

Subpart B—Coverage

36.200 Application.
36.205 Educational institutions and other entities controlled by religious organizations.
36.210 Military and merchant marine educational institutions.
36.215 Membership practices of certain organizations.
36.220 Admissions.
36.225 Educational institutions eligible to submit transition plans.
36.230 Transition plans.
36.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

36.300 Admission.
36.305 Preference in admission.
36.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

36.400 Education programs or activities.
36.405 Housing.
36.410 Comparable facilities.
36.415 Access to course offerings.
36.420 Access to schools operated by LEAs.
36.425 Counseling and use of appraisal and counseling materials.
36.430 Financial assistance.
36.435 Employment assistance to students.
36.440 Health and insurance benefits and services.
36.445 Marital or parental status.
36.450 Athletics.
36.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

36.500 Employment.
36.505 Employment criteria.
36.510 Recruitment.
36.515 Compensation.
36.520 Job classification and structure.
36.525 Fringe benefits.
36.530 Marital or parental status.
36.535 Effect of state or local law or other requirements.
36.540 Advertising.
36.545 Pre-employment inquiries.
36.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

36.600 Notice of covered programs.
36.605 Enforcement procedures.
36.610 [Reserved]

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 36.105 [Amended]

2. In § 36.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Director, Civil Rights Center'' is added in its place.

3. In § 36.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 36.100 through 36.610'' is added in its place.

4. Section 36.605 is added and § 36.610 is added and reserved to read as follows:

§ 36.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 29 CFR 31.5, 31.7 through 31.11.

§ 36.610 [Reserved]

DEPARTMENT OF THE TREASURY

31 CFR Part 28

FOR FURTHER INFORMATION CONTACT: Marcia H. Coates, Director, Office of Equal Opportunity Program, 1500 Pennsylvania Avenue, N.W., Room 6069 Metropolitan Square, Washington, D.C. 20220, (202) 622–1170.

List of Subjects in 31 CFR Part 28

Administrative practice and procedure, Age discrimination, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Investigations, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Lisa G. Ross,

Acting Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR subtitle A, as follows:

1. Part 28 is added as set forth at the end of the common preamble to read as follows:

PART 28—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
28.100 Purpose and effective date.
28.105 Definitions.
28.110 Remedial and affirmative action and self-evaluation.
28.115 Assurance required.
28.120 Transfers of property.
28.125 Effect of other requirements.
28.130 Effect of employment opportunities.
28.135 Designation of responsible employee and adoption of grievance procedures.

28.140 Dissemination of policy.

Subpart B—Coverage

28.200 Application.
28.205 Educational institutions and other entities controlled by religious organizations.
28.210 Military and merchant marine educational institutions.
28.215 Membership practices of certain organizations.
28.220 Admissions.
28.225 Educational institutions eligible to submit transition plans.
28.230 Transition plans.
28.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

28.300 Admission.
28.305 Preference in admission.
28.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

28.400 Education programs or activities.
28.405 Housing.
28.410 Comparable facilities.
28.415 Access to course offerings.
28.420 Access to schools operated by LEAs.
28.425 Counseling and use of appraisal and counseling materials.
28.430 Financial assistance.
28.435 Employment assistance to students.
28.440 Health and insurance benefits and services.
28.445 Marital or parental status.
28.450 Athletics.
28.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

28.500 Employment.
28.505 Employment criteria.
28.510 Recruitment.
28.515 Compensation.
28.520 Job classification and structure.
28.525 Fringe benefits.
28.530 Marital or parental status.
28.535 Effect of state or local law or other requirements.
28.540 Advertising.
28.545 Pre-employment inquiries.
28.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

28.600 Notice of covered programs.
28.605 Compliance information.
28.610 Conduct of investigations.
28.615 Procedure for effecting compliance.
28.620 Hearings.
28.625 Decisions and notices.
28.630 Judicial review.
28.635 Forms and instructions; coordination.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 28.105 [Amended]

2. In § 28.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Assistant Secretary for Management and Chief Financial Officer'' is added in its place.

3. In § 28.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 28.100 through 28.635'' is added in its place.

4. In § 28.105 add new definitions in alphabetical order to read as follows:

§ 28.105 Definitions.

* * * * *

Department means Department of the Treasury.

* * * * *

Reviewing authority means that component of the Department delegated authority to review the decisions of hearing officers in cases arising under these Title IX regulations.

Secretary means Secretary of the Treasury.

* * * * *

5. Sections 28.605, 28.610, 26.615, 28.620, 28.625, 28.630, and 28.635 are added to read as follows:

§ 28.605 Compliance information.

(a) *Cooperation and assistance.* The designated agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with these Title IX regulations and shall provide assistance and guidance to recipients to help them comply voluntarily with these Title IX regulations.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the designated agency official (or designee) timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the designated agency official (or designee) may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with these Title IX regulations. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these Title IX regulations.

(c) *Access to sources of information.* Each recipient shall permit access by the designated agency official (or designee) during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with these Title IX regulations. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with these Title IX regulations. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of these Title IX regulations and their applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations.

§ 28.610 Conduct of investigations.

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to

whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 28.615.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

§ 28.615 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 28.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 28.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under paragraph (c) of this section except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to September 29, 2000.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* (1) No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Secretary has filed with the committee of the House, and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* (1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

§ 28.620 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 28.615(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 28.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be

entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by these Title IX regulations, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these Title IX regulations, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these Title IX regulations with respect to two or more programs to which these Title IX regulations apply, or noncompliance with these Title IX regulations and the regulations of one or more other Federal departments or agencies issued under Title IX, the designated agency official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with these Title IX regulations. Final decisions in such cases, insofar as these Title IX regulations are concerned, shall be made in accordance with § 28.625.

§ 28.625 Decisions and notices.

(a) *Decisions by hearing officers.* After a hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing officer, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the designated agency official, file with the reviewing authority exceptions to the initial decision, with the reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 28.620, the reviewing authority shall make its final decision on the record or refer the matter to a hearing officer for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to these Title IX regulations with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary of the Treasury.* If the Secretary has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the reviewing authority in accordance with rules of procedure issued by the designated agency official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. The Secretary also may review such a decision upon his own motion in accordance with rules of procedure issued by the designated agency official. In the absence of a review under this paragraph (e), a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to congressional committees with the report required under 20 U.S.C. 1682. Failure of an applicant or recipient to file an exception with the reviewing authority or to request review under this paragraph (e) shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which these Title IX regulations apply, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title IX and these Title IX regulations, including provisions designed to assure that no Federal financial assistance to which these Title IX regulations apply will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to these Title IX regulations, or to have otherwise failed to comply with these Title IX regulations unless and until it corrects its noncompliance and satisfies the designated agency official that it will fully comply with these Title IX regulations.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with these Title IX regulations and provides reasonable assurance that it will fully comply with these Title IX regulations. An elementary or secondary school or school system that is unable to file an assurance of compliance shall be restored to full eligibility to receive Federal financial assistance if it files a court order or a plan for desegregation that meets the applicable requirements and provides reasonable assurance that

it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the designated agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the designated agency official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 28.630 Judicial review.

Action taken pursuant to 20 U.S.C. 1682 is subject to judicial review as provided in 20 U.S.C. 1683.

§ 28.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating these Title IX regulations.

(b) *Supervision and coordination.* The designated agency official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 28.625(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this Department.

DEPARTMENT OF DEFENSE

32 CFR Part 196

FOR FURTHER INFORMATION CONTACT: William E. Leftwich III, Deputy Assistant Secretary of Defense (Equal Opportunity), Room 3A272, The Pentagon, Washington, D.C. 20301–4000, (703) 695–0105.

List of Subjects in 32 CFR Part 196

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: July 10, 2000.

L.M. Bynum,

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

For the reasons stated in the preamble, the Department of Defense amends 32 CFR chapter I, subchapter M, as follows:

1. Part 196 is added as set forth at the end of the common preamble to read as follows:

PART 196—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
196.100 Purpose and effective date.
196.105 Definitions.
196.110 Remedial and affirmative action and self-evaluation.
196.115 Assurance required.
196.120 Transfers of property.
196.125 Effect of other requirements.
196.130 Effect of employment opportunities.
196.135 Designation of responsible employee and adoption of grievance procedures.
196.140 Dissemination of policy.

Subpart B—Coverage

196.200 Application.
196.205 Educational institutions and other entities controlled by religious organizations.
196.210 Military and merchant marine educational institutions.
196.215 Membership practices of certain organizations.
196.220 Admissions.
196.225 Educational institutions eligible to submit transition plans.
196.230 Transition plans.
196.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

196.300 Admission.
196.305 Preference in admission.
196.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

196.400 Education programs or activities.
196.405 Housing.
196.410 Comparable facilities.
196.415 Access to course offerings.
196.420 Access to schools operated by LEAs.
196.425 Counseling and use of appraisal and counseling materials.
196.430 Financial assistance.
196.435 Employment assistance to students.
196.440 Health and insurance benefits and services.
196.445 Marital or parental status.
196.450 Athletics.
196.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

196.500 Employment.
196.505 Employment criteria.
196.510 Recruitment.
196.515 Compensation.
196.520 Job classification and structure.
196.525 Fringe benefits.
196.530 Marital or parental status.
196.535 Effect of state or local law or other requirements.
196.540 Advertising.
196.545 Pre-employment inquiries.
196.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

196.600 Notice of covered programs.
196.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 196.105 [Amended]

2. In § 196.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Assistant Secretary of Defense (Force Management Policy)'' is added in its place.

3. In § 196.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 196.100 through 196.605'' is added in its place.

4. Section 196.605 is added to read as follows:

§ 196.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 32 CFR 195.7 through 195.12.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1211

FOR FURTHER INFORMATION CONTACT: Nancy Allard, Policy and Planning Staff (NPLN), 8601 Adelphi Road, College Park, Maryland 20740–6001, (301) 713–7360, ext. 226.

List of Subjects in 36 CFR Part 1211

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Discrimination in Education, Education, Educational study programs, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs—archives and records, Grant programs—education, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination.

John W. Carlin,

Archivist of the United States.

For the reasons stated in the preamble, the National Archives and Records Administration amends 36 CFR chapter XII, subchapter A, as follows:

1. Part 1211 is added as set forth at the end of the common preamble to read as follows:

PART 1211—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
1211.100 Purpose and effective date.
1211.105 Definitions.
1211.110 Remedial and affirmative action and self-evaluation.
1211.115 Assurance required.
1211.120 Transfers of property.
1211.125 Effect of other requirements.
1211.130 Effect of employment opportunities.
1211.135 Designation of responsible employee and adoption of grievance procedures.
1211.140 Dissemination of policy.

Subpart B—Coverage

1211.200 Application.
1211.205 Educational institutions and other entities controlled by religious organizations.
1211.210 Military and merchant marine educational institutions.
1211.215 Membership practices of certain organizations.
1211.220 Admissions.
1211.225 Educational institutions eligible to submit transition plans.
1211.230 Transition plans.
1211.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

1211.300 Admission.
1211.305 Preference in admission.
1211.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

1211.400 Education programs or activities.
1211.405 Housing.
1211.410 Comparable facilities.
1211.415 Access to course offerings.
1211.420 Access to schools operated by LEAs.
1211.425 Counseling and use of appraisal and counseling materials.
1211.430 Financial assistance.
1211.435 Employment assistance to students.
1211.440 Health and insurance benefits and services.
1211.445 Marital or parental status.
1211.450 Athletics.
1211.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

1211.500 Employment.
1211.505 Employment criteria.
1211.510 Recruitment.
1211.515 Compensation.
1211.520 Job classification and structure.
1211.525 Fringe benefits.
1211.530 Marital or parental status.
1211.535 Effect of state or local law or other requirements.
1211.540 Advertising.
1211.545 Pre-employment inquiries.
1211.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

1211.600 Notice of covered programs.
1211.605 Compliance information.
1211.610 Conduct of investigations.
1211.615 Procedure for effecting compliance.
1211.620 Hearings.
1211.625 Decisions and notices.
1211.630 Judicial review.
1211.635 Forms and instructions; coordination.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 1211.105 [Amended]

2. In § 1211.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Executive Director, National Historical Publications and Records Commission'' is added in its place.

3. In § 1211.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''36 CFR 1211.100 through 1211.635'' is added in its place.

4. Sections 1211.605, 1211.610, 1211.615, 1211.620, 1211.625, 1211.630 and 1211.635 are added to read as follows:

§ 1211.605 Compliance information.

(a) *Cooperation and assistance.* The designated agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with these Title IX regulations and shall provide assistance and guidance to recipients to help them comply voluntarily with these Title IX regulations.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the designated agency official (or designee) timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the designated agency official (or designee) may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with these Title IX regulations. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these Title IX regulations.

(c) *Access to sources of information.* Each recipient shall permit access by the designated agency official (or designee) during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with these Title IX regulations. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the agency from evaluating or seeking to enforce compliance with these Title IX regulations. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries,

and other interested persons such information regarding the provisions of these Title IX regulations and their applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations.

§ 1211.610 Conduct of investigations.

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1211.615.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

§ 1211.615 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 1211.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 1211.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under paragraph (c) of this section except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to September 29, 2000.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Archivist has filed with the committee of the House, and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* (1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

§ 1211.620 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1211.615(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall

be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 1211.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the agency in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5 through 8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by these Title IX regulations, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these Title IX regulations, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these Title IX regulations with respect to two or more programs to which these Title IX regulations apply, or noncompliance with these Title IX regulations and the regulations of one or more other Federal departments or agencies issued under Title IX, the designated agency official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with these Title IX regulations. Final decisions in such cases, insofar as these Title IX regulations are concerned, shall be made in accordance with § 1211.625.

§ 1211.625 Decisions and notices.

(a) *Decisions by hearing officers.* After a hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing officer, the applicant or recipient or the counsel for the agency may, within the period provided for in the rules of procedure issued by the designated agency official, file with the reviewing authority exceptions to the initial decision, with the reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1211.620, the reviewing authority shall make its final decision on the record or refer the matter to a hearing officer for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to these Title IX regulations with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Archivist of the United States.* If the Archivist has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the agency may request the Archivist to review a decision of the reviewing authority in accordance with rules of procedure issued by the designated agency official. Such review is not a matter of right and shall be granted only where the Archivist determines there are special and important reasons therefor. The Archivist may grant or deny such request, in whole or in part. The Archivist may also review such a decision upon his own motion in accordance with rules of procedure issued by the National Archives and Records Administration. In the absence of a review under this paragraph (e), a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of the agency when the Archivist transmits it as such to Congressional committees with the report required under 20 U.S.C. 1682. Failure of an applicant or recipient to file an exception with the reviewing authority or to request review under this paragraph (e) shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which these Title IX regulations apply, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title IX and these Title IX regulations, including provisions designed to assure that no Federal financial assistance to which these Title IX regulations apply will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to these Title IX regulations, or to have otherwise failed to comply with these Title IX regulations unless and until it corrects its noncompliance and satisfies the designated agency official that it will fully comply with these Title IX regulations.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with these Title IX regulations and provides reasonable assurance that it will fully comply with these Title IX regulations. An elementary or secondary school or school system that is unable to file an assurance of compliance shall be restored to full eligibility to receive Federal financial assistance if it files a court order or a plan for desegregation that meets the applicable requirements and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the designated agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the designated agency official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1211.630 Judicial review.

Action taken pursuant to 20 U.S.C. 1682 is subject to judicial review as provided in 20 U.S.C. 1683.

§ 1211.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for implementing these Title IX regulations.

(b) *Supervision and coordination.* The Archivist or his designee may from time to time assign to officials of the agency, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 1211.625(e)), including the achievements of effective coordination and maximum uniformity within the agency and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this agency.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 23

RIN 2900–AJ11

FOR FURTHER INFORMATION CONTACT: Ventris C. Gibson, Deputy Assistant Secretary for Resolution Management (08), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 273–9437.

List of Subjects in 38 CFR Part 23

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Approved: August 3, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR chapter I, as follows:

1. Part 23 is added as set forth at the end of the common preamble to read as follows:

PART 23—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
23.100 Purpose and effective date.
23.105 Definitions.
23.110 Remedial and affirmative action and self-evaluation.
23.115 Assurance required.
23.120 Transfers of property.
23.125 Effect of other requirements.
23.130 Effect of employment opportunities.
23.135 Designation of responsible employee and adoption of grievance procedures.
23.140 Dissemination of policy.

Subpart B—Coverage

23.200 Application.
23.205 Educational institutions and other entities controlled by religious organizations.
23.210 Military and merchant marine educational institutions.
23.215 Membership practices of certain organizations.
23.220 Admissions.
23.225 Educational institutions eligible to submit transition plans.
23.230 Transition plans.
23.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

23.300 Admission.
23.305 Preference in admission.
23.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

23.400 Education programs or activities.
23.405 Housing.
23.410 Comparable facilities.
23.415 Access to course offerings.
23.420 Access to schools operated by LEAs.
23.425 Counseling and use of appraisal and counseling materials.

23.430 Financial assistance.
23.435 Employment assistance to students.
23.440 Health and insurance benefits and services.
23.445 Marital or parental status.
23.450 Athletics.
23.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

23.500 Employment.
23.505 Employment criteria.
23.510 Recruitment.
23.515 Compensation.
23.520 Job classification and structure.
23.525 Fringe benefits.
23.530 Marital or parental status.
23.535 Effect of state or local law or other requirements.
23.540 Advertising.
23.545 Pre-employment inquiries.
23.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

23.600 Notice of covered programs.
23.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 23.105 [Amended]

2. In § 23.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Deputy Assistant Secretary for Resolution Management'' is added in its place.

3. In § 23.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 23.100 through 23.605'' is added in its place.

4. Section 23.605 is added to read as follows:

§ 23.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 38 CFR 18.6 through 18.11.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 5

FOR FURTHER INFORMATION CONTACT: Ann Goode, Office of Civil Rights, Environmental Protection Agency, 1200 Pennsylvania Ave, N.W. (1201A), Washington, D.C. 20460, (202) 260–4575.

List of Subjects in 40 CFR Part 5

Administrative practice and procedure, Buildings and facilities, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Environmental protection, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Dated: July 11, 2000.

Carol M. Browner,

Administrator, Environmental Protection Agency.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR chapter I, subchapter A, as follows:

1. Part 5 is added as set forth at the end of the common preamble to read as follows:

PART 5—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
5.100 Purpose and effective date.
5.105 Definitions.
5.110 Remedial and affirmative action and self-evaluation.
5.115 Assurance required.
5.120 Transfers of property.
5.125 Effect of other requirements.
5.130 Effect of employment opportunities.
5.135 Designation of responsible employee and adoption of grievance procedures.
5.140 Dissemination of policy.

Subpart B—Coverage

5.200 Application.
5.205 Educational institutions and other entities controlled by religious organizations.
5.210 Military and merchant marine educational institutions.
5.215 Membership practices of certain organizations.
5.220 Admissions.
5.225 Educational institutions eligible to submit transition plans.
5.230 Transition plans.
5.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

5.300 Admission.
5.305 Preference in admission.
5.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

5.400 Education programs or activities.
5.405 Housing.
5.410 Comparable facilities.
5.415 Access to course offerings.
5.420 Access to schools operated by LEAs.
5.425 Counseling and use of appraisal and counseling materials.
5.430 Financial assistance.
5.435 Employment assistance to students.
5.440 Health and insurance benefits and services.
5.445 Marital or parental status.
5.450 Athletics.
5.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

5.500 Employment.
5.505 Employment criteria.
5.510 Recruitment.
5.515 Compensation.
5.520 Job classification and structure.
5.525 Fringe benefits.
5.530 Marital or parental status.
5.535 Effect of state or local law or other requirements.
5.540 Advertising.
5.545 Pre-employment inquiries.
5.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

5.600 Notice of covered programs.
5.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 5.105 [Amended]

2. In § 5.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''the Director, Office of Civil Rights'' is added in its place.

3. In § 5.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 5.100 through 5.605'' is added in its place.

4. Section 5.605 is added to read as follows:

§ 5.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 40 CFR 7.105 through 7.135.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–4

RIN 3090–AG58

FOR FURTHER INFORMATION CONTACT: James M. Taylor, Director, Office of Civil Rights, General Services Administration, 1800 F Street, N.W., Room 5127, Washington, D.C. 20405, (202) 501–0767.

List of Subjects in 41 CFR Part 101–4

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Elementary and secondary

education, Government property management, Reporting and recordkeeping requirements, Sex discrimination, Women.

Thurman M. Davis, Sr.,

Deputy Administrator, General Services Administration.

For the reasons stated in the preamble, the General Services Administration amends 41 CFR chapter 101, subchapter A, as follows:

1. Part 101–4 is added as set forth at the end of the common preamble to read as follows:

PART 101–4—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
101–4.100 Purpose and effective date.
101–4.105 Definitions.
101–4.110 Remedial and affirmative action and self-evaluation.
101–4.115 Assurance required.
101–4.120 Transfers of property.
101–4.125 Effect of other requirements.
101–4.130 Effect of employment opportunities.
101–4.135 Designation of responsible employee and adoption of grievance procedures.
101–4.140 Dissemination of policy.

Subpart B—Coverage

101–4.200 Application.
101–4.205 Educational institutions and other entities controlled by religious organizations.
101–4.210 Military and merchant marine educational institutions.
101–4.215 Membership practices of certain organizations.
101–4.220 Admissions.
101–4.225 Educational institutions eligible to submit transition plans.
101–4.230 Transition plans.
101–4.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

101–4.300 Admission.
101–4.305 Preference in admission.
101–4.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

101–4.400 Education programs or activities.
101–4.405 Housing.
101–4.410 Comparable facilities.
101–4.415 Access to course offerings.
101–4.420 Access to schools operated by LEAs.
101–4.425 Counseling and use of appraisal and counseling materials.
101–4.430 Financial assistance.
101–4.435 Employment assistance to students.
101–4.440 Health and insurance benefits and services.
101–4.445 Marital or parental status.
101–4.450 Athletics.
101–4.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

101–4.500 Employment.
101–4.505 Employment criteria.
101–4.510 Recruitment.
101–4.515 Compensation.
101–4.520 Job classification and structure.
101–4.525 Fringe benefits.
101–4.530 Marital or parental status.
101–4.535 Effect of state or local law or other requirements.
101–4.540 Advertising.
101–4.545 Pre-employment inquiries.
101–4.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

101–4.600 Notice of covered programs.
101–4.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 101–4.105 [Amended]

2. In § 101–4.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''the Associate Administrator for Civil Rights'' is added in its place.

3. In § 101–4.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 101–4.100 through 101–4.605'' is added in its place.

4. Section 101–4.605 is added to read as follows:

§ 101–4.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 41 CFR part 101–6, subpart 101–6.2.

DEPARTMENT OF THE INTERIOR

43 CFR Part 41

RIN 1090–AA64

FOR FURTHER INFORMATION CONTACT: Melvin C. Fowler, Office for Equal Opportunity, MS 5221, U.S. Department of the Interior, Washington, D.C. 20240, (202) 208–3455.

List of Subjects in 43 CFR Part 41

Administrative practice and procedure, Adult education, Athletics, Civil rights, Colleges and universities, Counseling, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Marital status discrimination, Religious discrimination, Reporting and recordkeeping requirements, Research, Sex discrimination, Scholarships, Student aid, Training, Vocational education, Vocational training, Women.

Dated: July 3, 2000.

John Berry,

Assistant Secretary—Policy, Management, and Budget, Department of the Interior.

For the reasons stated in the preamble, the Department of the Interior amends 43 CFR subtitle A, as follows:

1. Part 41 is added as set forth at the end of the common preamble to read as follows:

PART 41—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
41.100 Purpose and effective date.
41.105 Definitions.
41.110 Remedial and affirmative action and self-evaluation.
41.115 Assurance required.
41.120 Transfers of property.
41.125 Effect of other requirements.
41.130 Effect of employment opportunities.
41.135 Designation of responsible employee and adoption of grievance procedures.
41.140 Dissemination of policy.

Subpart B—Coverage

41.200 Application.
41.205 Educational institutions and other entities controlled by religious organizations.
41.210 Military and merchant marine educational institutions.
41.215 Membership practices of certain organizations.
41.220 Admissions.
41.225 Educational institutions eligible to submit transition plans.
41.230 Transition plans.
41.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

41.300 Admission.
41.305 Preference in admission.
41.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

41.400 Education programs or activities.
41.405 Housing.
41.410 Comparable facilities.
41.415 Access to course offerings.

41.420 Access to schools operated by LEAs.
41.425 Counseling and use of appraisal and counseling materials.
41.430 Financial assistance.
41.435 Employment assistance to students.
41.440 Health and insurance benefits and services.
41.445 Marital or parental status.
41.450 Athletics.
41.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

41.500 Employment.
41.505 Employment criteria.
41.510 Recruitment.
41.515 Compensation.
41.520 Job classification and structure.
41.525 Fringe benefits.
41.530 Marital or parental status.
41.535 Effect of state or local law or other requirements.
41.540 Advertising.
41.545 Pre-employment inquiries.
41.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

41.600 Notice of covered programs.
41.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 41.105 [Amended]

2. In § 41.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Deputy Assistant Secretary for Workforce Diversity'' is added in its place.

3. In § 41.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 41.100 through 41.605'' is added in its place.

4. Section 41.605 is added to read as follows:

§ 41.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 43 CFR 17.5 through 17.11 and 43 CFR part 4, subpart I.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 19

RIN 3067–AC71

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Federal Emergency Management Agency, 500 C Street, SW., Room 407, Washington, DC 20472, (202) 646–4122, (telefax) (202) 646–4320, or (email) *Pauline.Campbell@fema.gov.*

List of Subjects in 44 CFR Part 19

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Employment, Equal educational opportunity, Equal employment opportunity, Federal aid programs, Grant programs—education, Investigations, Marital status discrimination, Reporting and recordkeeping requirements, Schools, Secondary education, Sex discrimination, Student aid, Universities, Women.

Dated: June 30, 2000.

Pauline C. Campbell,

Director, Office of Equal Rights, Federal Emergency Management Agency.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR chapter I, subchapter A, as follows:

1. Part 19 is added as set forth at the end of the common preamble to read as follows:

PART 19—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
19.100 Purpose and effective date.
19.105 Definitions.
19.110 Remedial and affirmative action and self-evaluation.
19.115 Assurance required.
19.120 Transfers of property.
19.125 Effect of other requirements.
19.130 Effect of employment opportunities.
19.135 Designation of responsible employee and adoption of grievance procedures.
19.140 Dissemination of policy.

Subpart B—Coverage

19.200 Application.
19.205 Educational institutions and other entities controlled by religious organizations.
19.210 Military and merchant marine educational institutions.
19.215 Membership practices of certain organizations.
19.220 Admissions.
19.225 Educational institutions eligible to submit transition plans.
19.230 Transition plans.
19.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

19.300 Admission.
19.305 Preference in admission.
19.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

19.400 Education programs or activities.
19.405 Housing.
19.410 Comparable facilities.
19.415 Access to course offerings.
19.420 Access to schools operated by LEAs.
19.425 Counseling and use of appraisal and counseling materials.
19.430 Financial assistance.
19.435 Employment assistance to students.
19.440 Health and insurance benefits and services.
19.445 Marital or parental status.
19.450 Athletics.
19.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

19.500 Employment.
19.505 Employment criteria.
19.510 Recruitment.
19.515 Compensation.
19.520 Job classification and structure.
19.525 Fringe benefits.
19.530 Marital or parental status.
19.535 Effect of state or local law or other requirements.
19.540 Advertising.
19.545 Pre-employment inquiries.
19.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

19.600 Notice of covered programs.
19.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 19.105 [Amended]

2. In § 19.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Director, Office of Equal Rights'' is added in its place.

3. In § 19.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 19.100 through 19.605'' is added in its place.

4. Section 19.605 is added to read as follows:

§ 19.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 44 CFR 7.10 through 7.15.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 618

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, (703) 306–1060.

List of Subjects in 45 CFR Part 618

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination, Women.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons stated in the preamble, the National Science Foundation amends 45 CFR chapter VI, as follows:

1. Part 618 is added as set forth at the end of the common preamble to read as follows:

PART 618—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
618.100 Purpose and effective date.
618.105 Definitions.
618.110 Remedial and affirmative action and self-evaluation.
618.115 Assurance required.
618.120 Transfers of property.
618.125 Effect of other requirements.
618.130 Effect of employment opportunities.
618.135 Designation of responsible employee and adoption of grievance procedures.
618.140 Dissemination of policy.

Subpart B—Coverage

618.200 Application.
618.205 Educational institutions and other entities controlled by religious organizations.
618.210 Military and merchant marine educational institutions.
618.215 Membership practices of certain organizations.
618.220 Admissions.
618.225 Educational institutions eligible to submit transition plans.
618.230 Transition plans.
618.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

618.300 Admission.
618.305 Preference in admission.
618.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

618.400 Education programs or activities.
618.405 Housing.
618.410 Comparable facilities.
618.415 Access to course offerings.
618.420 Access to schools operated by LEAs.
618.425 Counseling and use of appraisal and counseling materials.
618.430 Financial assistance.
618.435 Employment assistance to students.
618.440 Health and insurance benefits and services.
618.445 Marital or parental status.
618.450 Athletics.
618.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

618.500 Employment.
618.505 Employment criteria.
618.510 Recruitment.
618.515 Compensation.
618.520 Job classification and structure.
618.525 Fringe benefits.
618.530 Marital or parental status.
618.535 Effect of state or local law or other requirements.
618.540 Advertising.
618.545 Pre-employment inquiries.
618.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

618.600 Notice of covered programs.
618.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 618.105 [Amended]

2. In § 618.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''General Counsel and head of the policy office, Division of Contracts, Policy, and Oversight'' is added in its place.

3. In § 618.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 618.100 through 618.605'' is added in its place.

4. Section 618.605 is added to read as follows:

§ 618.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR part 611.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2555

FOR FURTHER INFORMATION CONTACT: Nancy B. Voss, Director, Equal Opportunity, Corporation for National and Community Service, 1201 New York Avenue, N.W., Washington, D.C. 20525, (202) 606–5000, extension 308.

List of Subjects in 45 CFR Part 2555

Administrative practice and procedure, Civil rights, Colleges and universities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Grant programs—education, Investigations, Loan programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Women.

Thomasenia P. Duncan,

General Counsel, Corporation for National and Community Service.

For the reasons stated in the preamble, the Corporation for National and Community Service amends 45 CFR chapter XXV, as follows:

1. Part 2555 is added as set forth at the end of the common preamble to read as follows:

PART 2555—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.
2555.100 Purpose and effective date.
2555.105 Definitions.
2555.110 Remedial and affirmative action and self-evaluation.
2555.115 Assurance required.
2555.120 Transfers of property.
2555.125 Effect of other requirements.
2555.130 Effect of employment opportunities.
2555.135 Designation of responsible employee and adoption of grievance procedures.
2555.140 Dissemination of policy.

Subpart B—Coverage

2555.200 Application.
2555.205 Educational institutions and other entities controlled by religious organizations.
2555.210 Military and merchant marine educational institutions.
2555.215 Membership practices of certain organizations.
2555.220 Admission.
2555.225 Educational institutions eligible to submit transition plans.
2555.230 Transition plans.
2555.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

2555.300 Admission.
2555.305 Preference in admission.

2555.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

2555.400 Education programs or activities.
2555.405 Housing.
2555.410 Comparable facilities.
2555.415 Access to course offerings.
2555.420 Access to schools operated by LEAs.
2555.425 Counseling and use of appraisal and counseling materials.
2555.430 Financial assistance.
2555.435 Employment assistance to students.
2555.440 Health and insurance benefits and services.
2555.445 Marital or parental status.
2555.450 Athletics.
2555.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

2555.500 Employment.
2555.505 Employment criteria.
2555.510 Recruitment.
2555.515 Compensation.
2555.520 Job classification and structure.
2555.525 Fringe benefits.
2555.530 Marital or parental status.
2555.535 Effect of state or local law or other requirements.
2555.540 Advertising.
2555.545 Pre-employment inquiries.
2555.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

2555.600 Notice of covered programs.
2555.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 2555.105 [Amended]

2. In § 2555.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Director, Equal Opportunity'' is added in its place.

3. In § 2555.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 2555.100 through 2555.605'' is added in its place.

4. Section 2555.605 is added to read as follows:

§ 2555.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR 1203.6 through 1203.12.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 25

FOR FURTHER INFORMATION CONTACT: Marc Brenman, Department Office of Civil Rights, Room 10217, 400 7th Street, S.W., Washington, D.C. 20590, (202) 366–1119 voice, (202) 366–8538 TTY, email: marc.brenman@ost.dot.gov; or Nancy Dunham, Senior Attorney-Advisor; Civil Rights, Office of Environmental, Civil Rights, and General Law, Room 5432, 400 7th Street, S.W., Washington, D.C. 20590, (202) 366–8072 voice, (202) 366–8538 TTY, email: nancy.dunham@ost.dot.gov.

List of Subjects in 49 CFR Part 25

Administrative practice and procedure, Civil rights, Colleges and universities, Discrimination, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Equal educational opportunity, Equal employment opportunity, Equal opportunity, Gender discrimination, Grant programs—education, Individuals with disabilities, Investigations, Loan Programs—education, Reporting and recordkeeping requirements, Sex discrimination, Student aid, Training, Women.

Rodney E. Slater,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR subtitle A, as follows:

1. Part 25 is added as set forth at the end of the common preamble to read as follows:

PART 25—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

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25.100 Purpose and effective date.
25.105 Definitions.
25.110 Remedial and affirmative action and self-evaluation.
25.115 Assurance required.
25.120 Transfers of property.
25.125 Effect of other requirements.
25.130 Effect of employment opportunities.
25.135 Designation of responsible employee and adoption of grievance procedures.
25.140 Dissemination of policy.

Subpart B—Coverage

25.200 Application.
25.205 Educational institutions and other entities controlled by religious organizations.
25.210 Military and merchant marine educational institutions.
25.215 Membership practices of certain organizations.
25.220 Admission.
25.225 Educational institutions eligible to submit transition plans.
25.230 Transition plans.
25.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

25.300 Admission.
25.305 Preference in admission.
25.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

25.400 Education programs or activities.
25.405 Housing.
25.410 Comparable facilities.
25.415 Access to course offerings.
25.420 Access to schools operated by LEAs.
25.425 Counseling and use of appraisal and counseling materials.
25.430 Financial assistance.
25.435 Employment assistance to students.
25.440 Health and insurance benefits and services.
25.445 Marital or parental status.
25.450 Athletics.
25.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

25.500 Employment.
25.505 Employment criteria.
25.510 Recruitment.
25.515 Compensation.
25.520 Job classification and structure.
25.525 Fringe benefits.
25.530 Marital or parental status.
25.535 Effect of state or local law or other requirements.
25.540 Advertising.
25.545 Pre-employment inquiries.
25.550 Sex as a bona fide occupational qualification.

Subpart F—Procedures

25.600 Notice of covered programs.
25.605 Enforcement procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

§ 25.105 [Amended]

2. In § 25.105 in the definition of ''Designated agency official,'' the brackets and text within brackets are removed and ''Director, Departmental Office of Civil Rights'' is added in its place.

3. In § 25.105 in the definition of ''Title IX regulations,'' the brackets and text within brackets are removed and ''§§ 25.100 through 25.605'' is added in its place.

4. Section 25.605 is added to read as follows:

§ 25.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 49 CFR part 21.

[FR Doc. 00–20916 Filed 8–29–00; 8:45 am]

BILLING CODES 7590–01–P, 8025–01–P, 7510–01–P, 3510–BP–P, 8120–08–P, 4710–10–P, 6116–01–P, 4210–32–P, 4410–13–P, 4510–23–P, 4810–25–P, 5000–04–P, 7515–01–P, 8320–01–P, 6560–50–P, 6820–34–P, 4310–RE–P, 6718–01–P, 7555–01–P, 6050–28–P, 4910–62–P

Federal Register

Wednesday,
August 30, 2000

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research and Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards Under Field Initiated Research Projects for Fiscal Year 2001; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of Final Competitive Preference Points for Fiscal Year 2001 for the Field Initiated competition.

SUMMARY: This notice announces the addition of a competitive preference points for the Field Initiated competition under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year 2001. We take this action to focus research attention on an area of national need. The additional points are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: This notice take effect on September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. If you use a telecommunications device for the deaf (TDD) you may call the TDD number at (202) 205–4475. Internet: donna nangle@ed.gov

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

Note: This notice of final competitive preference points does not solicit applications. A notice inviting applications is published in this issue of the **Federal Register.**

Analysis of Comments and Changes

On June 26, 2000 we published a notice of a proposed competitive preference points in the **Federal Register** (65 FR 39500). We received one letter commenting on the proposed additional competitive preference points by the deadline date. Except for minor editorial and technical revisions, there are no differences between the notice of proposed and these final competitive preference points.

Comment: One commenter said that there is a need to consider the professional qualifications of all proposed project research personnel in the application, including those with disabilities.

Discussion: In the notice inviting applications for the Field Initiated competition, NIDRR already includes in the project staff section of the selection criteria information for the peer reviewers to address the extent to which key personnel and other key staff have appropriate training and experience in the disciplines required to conduct all proposed activities.

Changes: None.

Additional Selection Criterion: We will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, we will use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

Within this absolute priority, we will give the following competitive preference to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we may consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR Part 350.

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:

http://ocfo.ed.gov/fedreg.htm
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Note: The official version of 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 84.133G, Field Initiated Research)

Program Authority: 29 U.S.C. 764.

Dated: August 23, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–21944 Filed 8–29–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133G]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Field Initiated Research Projects for Fiscal Year 2001

Purpose of the Program

Field-Initiated (FI) projects must further one or both of the following purposes: (1) Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and (2) improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. FI projects carry out either research activities or development activities. In carrying out a research activity, a grantee must identify one or more hypotheses, and based on the hypotheses identified, perform an intensive systematic study directed toward new or full scientific knowledge, or understanding of the subject or problem studied.

In carrying out a development activity, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes. Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

Goals 2000: Educate America Act

The Goals 2000: Education America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping

communities to exchange ideas and obtain information needed to achieve the goals.

This notice would address the National Education Goal that every adult Americans will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The notice of final competitive preference points for the Field Initiated competition is published elsewhere in this issue of the **Federal Register**.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: October 27, 2000.

Application Available: August 29, 2000.

Maximum Award Amount (per year): $150,000.

Note: Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Reasonable Accommodation Language: We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

Estimated Number of Awards: 30.

Note: The estimated funding level in this notice does not bind the Department of Education to make awards, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Project Period: 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98 and 99; and the following program regulations: 34 CFR Part 350.1 (a)(2).

Note: Research activities involving human subjects supported by awards under these programs are subject to Department of Education Regulations for the Protection of Human Subjects (34 CFR part 97). Information can be found on the research Web Site at: http://ocfo.ed.gov/humansub.htm

Invitational Priorities: We are particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are: (1) Projects that identify and evaluate approaches for the use of information technology innovations and systems to promote the independence and quality of life of persons with disabilities; (2) projects that address the impact of managing medication therapies on work transition issues for persons with HIV–AIDS; (3) collaborative international assistive technology and rehabilitation engineering projects including, but not limited to, projects that could be carried out under Science and Technology Agreements between the U.S. and other countries; (4) projects that identify and evaluate health management, medical rehabilitation, or community integration needs of persons with newly recognized disabilities such as multiple chemical sensitivity (MCS), chronic fatigue immune deficiency syndrome (CFIDS), or other auto-immune related diseases; and (5) projects to identify and develop methodologies appropriate for use in community-based research on various aspects of disability, rehabilitation, and living independently in the community.

The invitational priorities are based on NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/legislation/FedRegister/other/1999-12/68576.html*

We encourage applications from minority entities. The term minority entity means an entity that is a historically Black college or university, a Hispanic-serving institution of higher education, an American Indian Tribal College or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Selection Criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the selection criteria in 34 CFR 350.54, as well as the ten additional competitive preference points that have been announced in a notice published elsewhere in this issue of the **Federal Register**. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site: http://www.ed.gov/pubs/edpubs.html or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133G.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna_Nangle@ed.gov

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Program Authority: 29 U.S.C. 764.

Dated: August 23, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–21945 Filed 8–29–00; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
August 30, 2000

Part V

The President

Proclamation 7335—To Modify Duty-Free Treatment Under the Generalized System of Preferences

Federal Register
Vol. 65, No. 169
Wednesday, August 30, 2000

Presidential Documents

Title 3—

The President

Proclamation 7335 of August 27, 2000

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2461 and 2462), the President is authorized to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

2. Pursuant to sections 501 and 502 of the 1974 Act, and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Nigeria as a beneficiary developing country for purposes of the GSP.

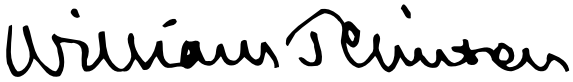
3. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to reflect in the HTS the addition of Nigeria as a beneficiary country under the GSP, general note 4(a) to the HTS is modified by adding ''Nigeria'' to the list of independent countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 30, 2000

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Land Remote Sensing Policy Act of 1992:

Private land remote-sensing space systems; licensing requirements; published 7-31-00

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Glyphosate; published 8-30-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Short-tailed albatross; published 7-31-00

LABOR DEPARTMENT

Occupational Safety and Health Administration

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Nationally recognized testing laboratories; fees; public comment period on recognition notices; published 7-31-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

San Francisco, Santa Barbara Channel, CA; traffic separation schemes; published 7-31-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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Agricultural Marketing Service

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Oregon and Washington; comments due by 9-5-00; published 7-6-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

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Florida; comments due by 9-5-00; published 7-17-00

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HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

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Piping plover; wintering populations along Gulf and Atlantic coasts; comments due by 9-5-00; published 7-6-00

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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.

H.R. 3519/P.L. 106–264

Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

Last List August 22, 2000

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